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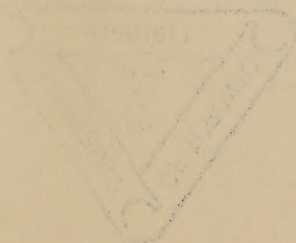
SELECT COMMITTEE ON CONSTITUTIONAL REFORM

1987 CONSTITUTIONAL ACCORD

THURSDAY, MARCH 10, 1988

Morning Sitting

Draft Transcript





SELECT COMMITTEE ON CONSTITUTIONAL REFORM

CHAIRMAN: Beer, Charles (York North L)  
VICE-CHAIRMAN: Roberts, Marietta L. D. (Elgin L)  
Allen, Richard (Hamilton West NDP)  
Breaugh, Michael J. (Oshawa NDP)  
Cordiano, Joseph (Lawrence L)  
Elliot, R. Walter (Halton North L)  
Eves, Ernie L. (Parry Sound PC)  
Fawcett, Joan M. (Northumberland L)  
Harris, Michael D. (Nipissing PC)  
Morin, Gilles E. (Carleton East L)  
Offer, Steven (Mississauga North L)

Substitution:

Keyes, Kenneth A. (Kingston and The Islands L) for Mr. Morin

Clerk: Deller, Deborah

Staff:

Bedford, David, Research Officer, Legislative Research Service

Witnesses:

From the Coalition for Better Day Care:

Davis, Janet, Vice-President

From Outreach Abuse Prevention:

Daigle, Maureen, Founder and Program Developer

Harris, Donna, Executive Director

From the Association of Liberals for the Amendment and Reform of Meech:

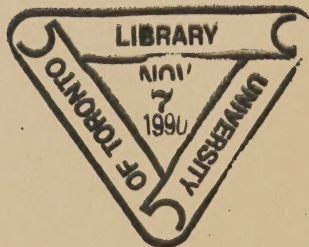
Roberts, Hon. John, Honorary Chairman

Levitt, Howard, Chairman

Cooke, Charles, Chairman, Policy Committee

Healy, David, Member, Policy Committee

Geiger, Mark, Member, Policy Committee





LEGISLATIVE ASSEMBLY OF ONTARIO  
SELECT COMMITTEE ON CONSTITUTIONAL REFORM

Thursday, March 10, 1988

The committee met at 10:07 a.m. in committee room 151.

1987 CONSTITUTIONAL ACCORD  
(continued)

Mr. Chairman: Good morning ladies and gentlemen. If we can begin our sessions, I would like to invite Janet Davis, the vice-president of the ??Ontario Coalition for Better Day Care. We want, first, to thank you for coming in and welcome you here to Queen's Park. We have a copy of your submission. If you would like to take us through it, we can follow up with questions afterwards.

ONTARIO COALITION FOR BETTER DAY CARE

Ms. Davis: As I was saying to someone, I am no constitutional expert here.

Mr. Chairman: Do not worry about that. We are not--

Ms. Davis: I had hoped to have some additional woman-power with me--

Mr. Keyes: Join the group.

Ms. Davis: --here this morning in handling it.

Mr. Chairman: We keep reminding people that we are not constitutional experts here and so we very much appreciate you coming. Please do not feel at all concerned that you do not think you are either.

Ms. Davis: Okay. I will try to avoid reading, although I think that I will follow basically the submission anyway.

The Ontario Coalition for Better Day Care, as it says here, is a broadly-based provincial advocacy organization. We are a provincial organization composed of large provincial organizations, provincial branches of national organizations, women's groups, social service groups, early childhood educators and parents. We have a network of groups across the province and we participate in lobbying activities at all three levels of government because child care is a service that is funded by all three levels of government.

The Coalition philosophically is committed to the establishment of a universally-accessible publicly funded not-for-profit child care system in Canada. We envision as part of such a comprehensive system the provision of a range of services and benefits that will enable all women to fully participate in every aspect of Canadian life. We believe that without such services women and children will continue to bear the costs of inequality. I am reading, even though I said I was not going to.

Mr. Chairman: That is quite all right.

Ms. Davis: Everyone reads. I do not like reading.

Mr. Breaugh: Not everyone on this committee can read.

Interjection: You can. ??Go ahead.

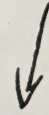
Mr. Chairman: Please feel free to do that, because you do want to make sure that your arguments are on the record.

Ms. Davis: Right.

Mr. Chairman: You are also speaking to a greater audience than is here, so please do not worry about that.

Ms. Davis: Okay. We acknowledge that a universal child care system in Canada requires national leadership, so it will also require that the federal government initiate a national program that would include federal legislation with national public policy objections and standards and conditions for shared-cost funding arrangements. But we are also aware that the provision of child care services lies in an area of exclusive provincial...

C-1010 follows.





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(Ms. Davis)

~~that would include federal legislation with national public policy objectives and standards and conditions for shared-cost funding arrangements. But we are also aware that the provision of child care services lies primarily within provincial jurisdiction and that the establishment of a national child care program would therefore require the use of the federal spending power and extensive federal-provincial negotiations.~~

1010

The 1987 Constitutional Accord, which will entrench for the first time the federal spending power in the Constitution, has profound implications for future development of child care in Canada. We believe that this amendment, section 106A, if passed, will prevent the establishment of a national child care program that could provide high-quality, universally accessible, publicly funded nonprofit child care services in every province. In fact, the impending constitutional changes have already jeopardized the possibility of such programs.

In this submission we will first focus on some of the fundamental flaws generally that we see in the proposed amendment. Specifically, we are going to be addressing the spending power provisions. We do acknowledge that there are some other implications for women's equality rights in other sections, but we are going to focus specifically on the spending power provisions.

I would like to, first, illustrate with some examples some of the inconsistencies that currently exist in child care across Canada; second, address briefly how we see this being resolved; and third, show how the Meech Lake accord has affected this present federal government's current child care initiatives. We feel that the impending constitutional changes have in fact affected what we have been presented with most recently. Finally, we have some recommendations. I have included the clause, because we use this as an educational tool for some of our members.

There are four main concerns with section 106A and the spending power provisions. I think initially it will be a disincentive for the establishment of new national programs. It will result in the balkanization of social programs. The ambiguity of language and judicial interpretation will have profound effects on what we eventually see. We are concerned about the increased decentralization that will exist or will develop in the Canadian federal system. I may be able to just go through some of these. I am sure you have heard them all.

Mr. Chairman: I doubt that we have heard them in quite this context, quite frankly, focused on a particular program, so please go ahead.

Ms. Davis: The initial parts are fairly general, and then I will follow up later.

As I said, I think this section will act as a disincentive for future federal governments and this existing federal government to initiate new national programs. The opting-out provisions will discourage federal initiatives that are not likely to receive provincial consensus, and without guarantees that all or most provincial governments will participate in a new program, the federal government will hesitate to take the political risk of initiating programs that may look ineffective.

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credit for popular programs that are federally funded but provincially initiated. Because of these potential implications, new national social programs will be sidestepped in favour of more visible federal spending. The tax system will likely be used as the most politically effective route for responding to social issues. Secondly, is the issue of balkanization of social programs. The provincial opting out provision will create a checker board of social programs across the country, in fact the joint committee in its recommendations I was quite surprised, also acknowledged that that would be the effect and I will refer to that later. The possibility of future national universal programs may be dashed leaving the federal government with little ability to ensure that all Canadian are guaranteed crucial social services. A patchwork of diverse and uneven services across the country will be the norm, creating unequal access and restricting portability and erosion of equality and mobility rights. In order to curtail opting out, the national objectives will inevitably be the lowest denominator standards. Again, inhibiting the possibility of consistent high quality...

(C-1015-1 follows)





~~...restricting portability and erosion of equality and mobility rights. In order to curtail spending cuts, the national objective will increase the common denominator standard, again inhibiting the possibility of consistent high quality programs in every province.~~

Again, another argument most critics have pointed to is the ambiguity of the language in the section. It is dangerously ambiguous. Most of the terminology in the clause has not been interpreted by courts before. Some of the language, I understand, does exist in some statutes but certainly not in a document that is as fundamental as the Constitution. It will inevitably mean that there will be judicial interpretation of these clauses.

There are a lot of things that are unclear: which programs will come under the purview of this act, will it be amendments to existing programs or will it be only new programs? Those questions are still not answered. What degree of compatibility to national objectives will allow provinces for funding if they opt out? Does it mean there will be partial funding or, as I pointed out, possibly funding commensurate with program alignment? Could we see partial funding of programs? Provinces may get some money for this and not for that. In a sense, provincial governments, if they choose to opt out, have no guarantees what kind of funding they may receive anyway.

Most striking is the shift of power from the legislative to the judicial branch and the ability of governments and legislatures to develop social policy and determine federal spending priorities. I do not believe that the judiciary is the appropriate body for developing public policy. There are a number of amendments in the Meech Lake accord that will increase decentralization and give greater power to the provinces. The ability of the province to suggest appointments to the Supreme Court of Canada and entrenched first ministers meetings--all of these things--will have an impact on the federal system and a devolution of federal power.

The regular first ministers meetings will in effect create a de facto third level of government, relegating legislatures to merely a chamber of ratification. I think the Meech Lake accord is fundamentally flawed and the proposed spending power amendment will detrimentally affect our ability as a nation to respond to changing social conditions and emerging economic challenges. Generally it is a reiteration of the arguments that the federal government would have little incentive to initiate new programs, we will have greater uneven level of services around the country and there will be effective transfer of power to the judiciary.

Generally, the Canadian child care system right now is in a state of crisis. We have simply not enough child care. What exists is too expensive. What exists is also uneven in its level of quality. Accessibility across the country is certainly inequitable currently. This hodgepodge of existing services has been acknowledged by politicians and the public alike for many years and we recognize that there is need for federal leadership to establish a new federal program.

I just gave a few examples here of some of the inequities and inconsistencies that exist currently. I have broken it down into "subsidy." The maximum income for a one-parent one-child family eligible to receive a full subsidy in Ontario is \$27,772. It is \$11,925 in Manitoba, \$8,964 in Newfoundland and ??\$10,692 in British Columbia. The percentage of children



Ms. DAVIS

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eligible for subsidy who are actually receiving it right now in Canada: 96 per cent of children in Quebec are receiving care who are eligible, 12 per cent in Ontario and 32 per cent in Saskatchewan.

C-1020 follows.



(Ms. Davis)

~~...receiving it right now in Canada. 96 per cent of children in Quebec are eligible for 12 per cent in Ontario and 72 per cent in Saskatchewan.~~

1020

Per capita spending on child care is \$88 in British Columbia, \$134 in Alberta and \$67 in New Brunswick.

Expenditures for operating grants are \$16 million in Quebec, \$500,000 in British Columbia and \$8,000 in Newfoundland.

In standards and regulations, I was not able to give you a whole lot of that. Because child care is in their provincial jurisdiction standards and guidelines are provincial jurisdiction. So there is a range of things that vary, but staff training, staff-child ratios and a number of other things vary tremendously across the country. The range of services available also range dramatically. I have just given a few examples here. There is no group infant care available in Saskatchewan and Newfoundland. There is no family day care in Newfoundland. 70 per cent of Alberta's care is commercial daycare.

British Columbia provides subsidies for unsupervised daycare. There only 10 spaces for special needs children in Prince Edward Island.

The need for new federal initiatives to address the severe inequities has been documented in study after study. In 1986, the Katie Cooke Task Force tabled its report recommending sweeping changes to the child care system to be phased in over 10 years. With strong federal leadership to encourage the expansion of high quality services, with clear national standards and federal-provincial cost-sharing criteria, the federal government could initiate the development of a real national child care system, which was recommended in this report. This report has been overlooked by the federal government.

There are many people involved in the child care field who see the Meech Lake accord as actually having had a dramatic impact on the federal policy that was recently released. In fact, some of the fundamental flaws that I pointed out, as I am sure you have heard many times in the accord, have proven themselves when you look at what has been offered to us by the federal government. In fact, many people see the national child care policy as the first test case for the Meech Lake federalism.

In order to prevent provincial disagreement and, at the same time, gain some political credit, the federal government has proposed a plan which will further fragment and limit access to high-quality child care for families in different provinces across Canada.

Political credit equals tax credit, because that is exactly what the federal government has done. Of the \$5.4 billion, almost half, \$2.3 million has been allocated to tax credits, or tax measures. There are child care expense deductions, increases and also a new child care tax credit. Instead of directing the funds that are available into developing and increasing the supply of services the federal government has opted for what we have considered to probably be a more political expedience, and politically popular

Ms. Davis

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strategy.

Both the Katie Cooke Task Force and, in fact, the Tory special committee also acknowledge that tax measures were not the way to go to developing national child care policies.

The increased tax deductions are regressive. It benefits those who already have a child care space, who are lucky enough to have one, and it gives a bigger tax break to those with higher taxable incomes. So deductions certainly have been rejected by almost everyone as the way to go to deal with child care. The tax credit that they are offering is \$100. It will increase to \$200 each year. It will do nothing to address the problem for those who need or cannot afford quality child care.

The tax credit takes up also more than half of the \$2.3 billion. It is a pittance, but it is spread so widely it is available to everyone who stays at home or who does

(Tape C-1025 follows)



(Ms. Davis)

~~...can credit take up also more than half of the cost of child care. It is available to everyone who pays at least \$100 a month for child care. It is available to everyone who pays at least \$100 a month for child care. It is available to everyone who pays at least \$100 a month for child care.~~  
... use the child care expense deduction. It is a huge expenditure, and it is not going to do anything for anyone. It is a disaster. You get your tax refund at the end of the year. It is something that individuals can acknowledge came directly from the federal government.

The second part of the program is positive, but what is strictly inadequate is the proposed new national ?? child care act. It is a new federal-provincial cautionary arrangement which will remove child care from the Canada assistance plan, which was the welfare legislation which funded money to child care, has funded money to child care all along.

What the new federal-provincial cautionary arrangement is proposing to do is to lump together subsidized day care, operating grants and capital grants. The money that has been targeted is \$3 billion over seven years, which works out to about \$4 million a year. We have costed out what federal spending would have been through the existing Canada assistance plan. It would have been at that level anyway.

It really is actually a sham. The openendedness of the Canada assistance plan is now, this new federal cost-sharing arrangement will be limited. It will place each province in competition with each other. There are going to be preferential cost-sharing arrangements for the poor provinces. It may mean that Ontario particularly will, in the end, lose out and not get the kind of funding that it has had in the past. In fact, I think Ontario has made a very big mistake in accepting so quickly overnight of one first ministers' meeting program that will inevitably place it in an economic squeeze at the end of the seven-year period.

As I have said here, the initiatives intended to increase the supply of child care are disgracefully inadequate. Rather than targeting sufficient funds to meet the evergrowing demand for service, the federal government has opted for more visible strategy for buying political support.

What it has also done, I call no opting out, no strings attached. They have simply said, "We will cost-share what you want to spend." There are no conditions to the money. It means that Alberta, which has been lobbying like crazy for years and years to get more federal dollars to direct into the commercial sector, because they have been picking that up 100 per cent themselves, are now going to be able to get federal dollars for that commercial sector.

So in order to gain immediate provincial consensus on this program, the federal cost-sharing provisions have no national standards, not objectives and no funding criteria, no funding conditions. While the Minister of Health and Welfare stated that these standards and objectives will be developed, they are still negotiating. I hear they cannot come up with a definition of child care. It is unlikely that any conditions will assure equitable access to high-quality services across the country. In essence, we are sure that lowest common denominator standards will take the form of vague, national objectives.

As I said, for the first time federal funds for operating grants will be available to commercial day-care operators. All of the most recent evidence

Ms. Davis

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has shown that the quality of care in commercial programs is of lower standards. This concession has come as the result of strong provincial lobbying. Without national criteria that directs funds to nonprofit only, the new funding will be a bonanza for private entrepreneurs compromised in the quality of care in many provinces.

Federal officials have stated that such flexibility in provincial spending is necessary to meet regional needs, but allowing for provincial discretion will, undoubtedly, result in further balkanization, a further checkerboard of child care services across Canada.

Without conditions on favourable cost-sharing for provincial child care services the federal government has abdicated its responsibility to ensure that Canadians have reasonable access to needed social programs, and has become a broker of federal funds.

~~It has jeopardized the possibility of establishing a national system of~~

~~child care~~

(Tape C-1030 follows)

sn  
(Ms. Davis)

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~~that Canadians have reasonable access to meet its social program needs and become a broker of federal funds.~~

1030

They have jeopardized the possibility of establishing a national system of child care in Canada. We are extremely concerned that the national policy that has been placed before us will move us into a new direction that we will not be able to change in the future. It is an example of--I refer to it later--a blank cheque to the provinces. I know you are sitting here as provincial legislators and it is difficult for me to provide arguments as to why you should not have more autonomy. But it is an incredibly dangerous precedent.

There are provinces right now, British Columbia in particular, who would like to provide vouchers for babysitting, who will never see the creation of a child care system that will ensure any kind of quality if the federal government does not establish standards and criteria for federal transfer payments.

As I said, we believe that the Constitution amendments have already affected the current child care policy and we are concerned about implications for the future. Talk about antiquated language again. We are concerned about the effect of shift of power to the judiciary. Public accountability for spending priorities must rest with elected officials and not judges if we are to continue to influence the development of public policy.

We also believe that the federal government must not relinquish effective decision-making power to a collective of deal making provincial premiers and senior bureaucrats. Our experience to date with the secretive process of executive federalism, has been frustrating and alienating.

We acknowledge that Quebec's place in Canadian federation should be unique but opting out privileges should not be conceded to all provinces as the price of agreement.

We believe that the proposed 1987 constitutional accord will impact negatively on the future development of a national child care program. It has already had a profound effect.

In order to score political success and assure Canadians that the accord is workable, the federal government has chosen a political expedient route for addressing this crucial social policy issue. The future of all social programs in Canada are being threatened by the provisions in the Meech Lake accord. If a Canadian federal system is to respond to the challenges of changing economic circumstances, our national government must retain its ability to determine social priorities and enact appropriate legislation.

We would like to recommend that the Ontario government reject the proposed accord and request another first ministers' meeting to renegotiate the accord and that the Ontario government show leadership in ensuring that all Canadians have access to programs and services that are equitable and portable by renegotiating the agreement that contains a federal spending power clause, but eliminates opting out provisions ??compensation for all provinces.

I am sorry I jumped all over the place.




Mr. Chairman: That is quite all right. I think it is clear and as I mentioned before, particularly helpful because you have looked at a specific program area. It has been mentioned before, but I do not think in quite the detail that you have gone into it. That is very helpful. We will turn now to questions.

Mr. Breaugh: I thank you for doing something that I think we had to do at some point in time and we probably will go through this exercise on more than one occasion, but I think we have to. I appreciate the chance because it talks about a program that many of us are really interested in because it has such an increasingly dramatic effect on the people that we represent. I do not think you could pick one in quite such a distinctive way. There are no rules at work out there and it is an increasingly large problem for an immense number of people. It is one of those blockading issues that if there is not reasonable child care provided, the person cannot work and their whole economic structure is destroyed.

It is also a good example of why there is more than one political party in this country when we look at a common set of facts and come to different conclusions. I agree absolutely with your assessment of the current situation. I believe we got there because there has never been any rules about federal spending. Upstairs in the chamber we are constantly at one another about, "Why do you not do it the way Manitoba does it, Quebec does it or Saskatchewan does it?" It is not too often you hear cries to do it the way British Columbia does it, but there used to be. It used to happen.

I think the basic problem is your assessment of the current situation is absolutely correct because there have never been any rules---

C-1035-1 follows



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(Mr. Breagh)

I think the basic problem is that your assessment of the situation is absolutely correct because there have never been any rules about federal spending programs. Basically they are all negotiated on an ad hoc basis. That is why Quebec has a different pension plan than the rest of the country. Why medicare is not the same in any of our provinces and we constantly argue about how can a little province like Saskatchewan provide assistant devices and Ontario cannot, because there are no rules to that game.

I read this accord in a much different light than you do. Of all the things that I would not want to do in Canada right now, is give Brian Mulroney and that group sole jurisdiction on anything. My assessment is the lousy proposals in child care are my best example of why I do not want the federal government to have clear jurisdiction to set all of the rules in there. I think the people in Canada every once in awhile make big mistakes. They made one in the last federal election and we are paying a heavy price for that.

I would agree with all of the facts that you have stated here and argue just the opposite as to cause. I would argue that the reason we are balkanized now is that we have never had any rules. I would argue that one of the things I want to a Constitution for is that I want a person in Newfoundland, BC or Ontario ultimately to have the right to go to court to argue that my government is not treating me fairly and it is a violation of my constitutional rights that they do not provide me with reasonable, good quality child care. That is what a Constitution is about. That is a little new in Canada, but that is what constitutional rights are about.

I am perplexed a little bit, because I know a number of people who are very interested in child care programs, have come to much the same conclusion that you have. I cannot for the life of me understand. See here is where you lose me. We do not have any rules now and every one of us agrees that the system is screwed up badly. How does the provision, for the first time in our history, of writing down, whether we call them guidelines or standards or things of that nature--we can get into that argument if you want, but I do not think that is the pertinent one here--we have no rules now. How is it that putting it into the Constitution, kind of a standardization of federal funding powers, how does that screw up the process? Do you really want all of your eggs in one basket? That would be my concern. I know we have heard this argument before that you could never do medicare, but medicare came out of Saskatchewan. The poorest province in the country started medicare in Canada and shamed the federal government into extending it into a national program.

Ms. Davis: Yes but the Canada Health Act ensured that there was no opting out in every province.

Mr. Breagh: That is not true. That is simply not true. The Canada Health Act did not. The Canada Health Act by itself required provincial legislation in each of the Legislatures across the country to see that it was implemented. There are those who would argue that even with a federal act and a provincial act in Ontario, there are still doctors who extra bill and there are.

It is not that I am arguing at all with your case. I am agreeing with your case. I am agreeing with your assessment. But, I come to a different conclusion than you do.

Ms. Davis: I guess what we want to see is a national child care

system that will guarantee that every person in Canada has access to certain standards.

Mr. Breaugh: Me too.

Ms. Davis: Well I guess then basically you believe that the judiciary can play that role.

Mr. Breaugh: Let me stop you there. I believe that the judiciary has a role to play, as it did in the Supreme Court about a week or so ago. It is not going to be a regular thing. It is going to be a last resort. When your political process fails you, you retain the legal right to go to court and challenge whether or not governments are treating you fairly. That is what a Constitution is about in my books. I want that. I want the right of some, probably a woman, in a small town in northern Ontario, to go to court and say, "The province of Ontario got this money on the premise that they would provide a good child care program with reasonable access and in Kapuskasing they are not doing that." If the province of Ontario will not change its programs and provide reasonable access, and she has a right to go to court, then I believe a judge has a right to say, "Yes, you pay the same tax dollars in Kapuskasing as you do in downtown Toronto. You deserve the same access to the same system." I would hope that the judge would be reasonable in how he would assess that, but I think---

C-1040-1 follows





~~go to court, then I believe a judge has the right to say, "Yes, you pay the same tax dollars in Vancouver as you do in downtown Toronto, you cover the same costs to the same system." I would hope that the same would be responsible in how he would assess that, but I think that is a legal right that I want Canadians to have.~~

1040

Ms. Davis: Then you have greater faith in judicial interpretation.

Mr. Breaugh: You have more faith in Brian Mulroney than I do. I mean that as an insult.

Ms. Davis: But at least I can remove Brian Mulroney.

Miss Roberts: But then you might have Ed Broadbent.

Mr. Breaugh: She has me back outside now.

Mr. Chairman: The chair will intervene here to calm the waters. The honourable member for Elgin is being argumentative.

Mr. Offer: Thank you very much for your presentation. Not only did it deal with the spending power, but of course bringing a focus on a particular issue with respect to the child care problems, which you have raised very well and brought forward some of the problems that your organization is having both at a federal and a provincial level. I think it is extremely important, when we deal with this particular part of the accord, not only dealing with your particular issue but also future issues that might confront not only the provinces but the country as a whole.

On that point, my first question was going to revolve around your presentation, that it seemed the jurisdiction of child care ought to go back or ought to be changed to the federal government as opposed to the provincial. That was just the way it seemed to be leaning.

Ms. David: It cannot go to the federal government.

Mr. Offer: The question I want you to really respond to is, especially from your organization, especially because this is a coalition, it is dealing with a matter at hand that is very topical right now and it is dealing with a matter in which you see very large problems. One of the responses you gave in your presentation was that Ontario made a mistake in accepting this program that the feds have with respect to the cost-sharing.

Because there is now a section 106, because there is now the opportunity for you to go to the province--you know that it is a national problem, but each one of the affiliates can go to each province and say, "Listen, the principle is good, but we think that this service should take this direction in this province." You now, on a provincial basis, have the right to use section 106 and say, "We are going to opt out, we are going to receive the reasonable compensation, we are going to comply with the objectives, and we might even build upon the objectives."

This is the problem I have. Why would your organization especially be

Mr. O'Fex

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reluctant to have that extra clout that you will now have with all the provinces in the country, saying: "You, province, can now opt out. You can, in a very real sense, meet the particular problems of your province, and we want you to do that."

I just have a problem in seeing why the reluctance as opposed to going the way it was before and saying, "It is a federal program and we are just going to try to carry it out as best we can, as opposed to tailor-making it for the particular province."

Ms. Davis: You may wish to tailor-make it, but as I said, in the end the interpretation of your programs and how compatible they are with national objectives may mean that you are not able to produce the kinds of programs you have.

Also, we have over half of the spending on the tax ??route. I think that is the concern, that there is an avoidance of producing

C-1045 follows



Ms.  
(Ms. Davis)

C-1045-1

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~~We have over half of the spending on the tax 82 cents. I think that the~~  
concern, that there is an ~~obstacle~~ of producing--I am talking myself into a corner right here, I can see this.

Mr. Chairman: If I could just underline that you are sharing with us a problem that we are really grappling with. If we seem to be coming at you, please do not take it that way. After four or five weeks of hearings, we have realized there is a potential problem here, so we are trying to explore it through different routes and we are sharing our dilemma and our problem with you. So we work together here.

Mr. Offer: That is right. We are trying to come to grips with section 106, the spending power, the right of the provinces to opt out and trying to assess the impact of that.

Ms. Davis: To go back and negotiate it and tighten up the wording of the agreement probably is the most reasonable thing to do in order to get agreement. Just the way it is now, it is so loose that you could not produce a national program that would guarantee any sort of level of consistency across the country. If this federal government will come up with national objectives that are very vague, we are simply not going to have a system that will have any consistency.

Mr. Offer: Thank you very much for that. In dealing with the spending provision, we are certainly going to have to take into account certain examples. The one that you bring today and have discussed with such thoroughness is one that is going to weigh very heavily on our minds.

Mr. Elliot: I would like to focus right in on the section of the accord that we are talking about here, because there is a lot of nebulousness about the discussion up to this point with respect to the actual wording and what it affects.

What it says in section 106A, parts I and II, which are added to the Constitution, is, "The government of Canada shall provide reasonable compensation to the government of a province that chooses not to participate in a national shared-cost program that is established by the government of Canada after the coming into force of this sections," because it does not apply to cost-shared programs that are presently in place. And it is in an area of exclusive provincial jurisdiction, which a number of times this morning we have said this particular concern is. It says, "If the province carries on a program or initiative that is compatible with the national objectives."

The second part says, "Nothing in this section extends the legislative powers of the Parliament of Canada or the legislatures of the provinces."

I submit that a group like your own can do a lot in the context of the wording that is there right now in two ways. It is obvious that you are disenchanted with the present agreement. I really think that the coalition, by applying a lot of pressure in this particular year federally, could come up with an interpretation of "national objectives," for example, that are actually national standards. By clearly delineating to the federal government what the expectation is nationally, you could do a lot of good that way.




The other thing is with respect to the province--because it is still provincial jurisdiction--you could fill in all the gaps that are needed with respect to the province of Ontario so that when a final agreement is perpetrated, it closely reflects what is actually wanted by the people in the province; in fact, in all the provinces.

The comment I would like to make is that I think that rather than going with a recommendation like the one in your paper where it says, "Reject and start over again," I think starting with this point, you could very clearly, through agreements--and not constitutionalize. I think what you are saying to me, as I listen this morning, is that you want it all in the Constitution. I submit that in all these areas, if we try to constitutionalize the agreement as well as the fact that we are trying to go after, it is going to be too long and involved a process and you are going to lose in the long haul.

This is my comment with respect to what I have heard this morning. I think you are trying to constitutionalize something that really should be an agreement between the provinces and the federal government.

Ms. Davis: The ??Canadian Day Care Advocacy Association actually has developed national objectives and standards with various criteria. I think they are modelled on the Canada Health Act,,,

C-1050 follows



(Ms. Davis)

~~Association actually established that national objectives and standards with various criteria. I think they are modelled on the Canada Health standards, criteria, purpose and so on.~~

1050

Mr. Elliot: A supplementary comment I would like to make here is that this is the first time that the federal government could do something like this. Until now there was nothing in the Constitution that allowed them to act at all in this particular area because it was strictly a provincial jurisdiction.

I agree with you completely that if the national standards or objectives were such that there was a good set of standards there, it would certainly add a lot in this particular area, which concerns all of us really. I think this is a political decision, this particular one. Both the provincial and the federal politicians have to come up with an agreement that is satisfactory to the people who need the day care service.

Ms. Davis: I agree. The problem is that right now all of these negotiations are going on behind closed doors with all these various senior bureaucrats and so on. We have no access to that process.

Mr. Elliot: That is another thing that is coming through loud and clear in these discussions; I do not think the people of Ontario are going to stand for that beyond this point in time. Thank you very much, Mr. Chairman.

Mr. Keyes: I have a very brief one which follows up exactly on that point. In your brief you make very clear your message of the potential impact on the lack of ability as a result of Meech Lake to have standardized programs for everyone. I see your brief as one clearly expressing your frustration with the process as much as anything else. You say on page 11 that it should not be left to a collective or the deal-making provincial premiers and bureaucrats. Yet when you end your brief, your very first recommendation says: "Throw out Meech Lake and send them all back again and start the process over," and I think--

Ms. Davis: No. I realize--

Mr. Keyes: --that typifies your total frustration with it, because you are saying go back to it again.

Ms. Davis: Yes. I realize; our concerns about the process were not addressed in the recommendations. I think that what is happening here should have occurred a long time ago and should have been more meaningful. In fact, I find it extremely hypocritical to be sitting here doing this when the Premier only two days ago said there are no changes to the accord.

Mr. Keyes: Well, just remember that the committee still has to make a report on this.

Ms. Davis: Well, that is wonderful. I am glad. I feel so wonderful--

Mr. Harris: How do you think we feel.

Mr. Eves: I am glad he decided to do it this spring.

Ms. Davis: --that I spent all this time on that. This work--

Mr. Keyes: You might also--you had some very excellent statistics on pages 6 and 7. I think they could have been much more effective if you had been consistent in carrying through those headings with regard to the same provinces, because you jumped so that in the one, about subsidy, what is needed--you included Ontario but then when you go to funding you do not include Ontario, and so on.

Ms. Davis: No. I just wanted to illustrate some of the extremes. They were very ??inconsistent. I also did not put in the source, which was not very good either, but this was certainly a rush job.

Mr. Keyes: I think it still makes a good brief, and you could still put more on it.

Mr. Davis: The Ontario Coalition for Better Child Care has probably submitted about 25 briefs and submissions to every manner of select committee, special committee, task force. Over the last two years, we have been consulted beyond our resources. That is why I say, particularly of this committee, I find it extremely frustrating that it does not appear to be able to have any impact on the provincial decisions.


Mr. Keyes: It will have the impact once we get the funding from the national level. Do not give up hope. Your presentation can still bear a lot of fruit once we see the source--

Ms. Davis: If you want to get into talking about day care politics and the Ontario government--

Mr. Keyes: Not this morning.

Ms. Davis: They have acknowledged very clearly that they have compromised in accepting this national program and have found that it over the short term, it enables the Ontario government to do what it had said it was going to do in its new directions policy last spring. So what the feds offered was enough for now, but at the end of the seven years, they acknowledge there is going to be a big problem. I am quite surprised, actually, that there was not a more cautious approach to that federal proposal.

C1055 follows





~~(Mr. Breaugh)~~

~~...going to be a big problem, and I am quite surprised that there was not a more cautious approach to that federal group.~~

→ Mr. Chairman: Ms. Davis, I want to thank you very much for joining us this morning and presenting your brief. In closing, I want to make a couple of comments. I do not think there is anybody around these tables who appreciates the process to a greater extent--that we have all had to deal with. What is important is that as long there are hearings, it allows time for ideas to come forward, it allows people to review ways of handling problems and we are part, in a sense, of a much broader process. There are other provinces that have indicated they are also going to be having hearings. We have heard from I do not know how many groups and individuals and have a lot to hear from as yet.

I think when we look at the process that was set out and the fact that there is a three-year period, there is a lot of discussion that is still to go on and we are hearing a lot of things that we certainly will have to reflect in our own report. I do not think we know exactly where we are going to be, and I think that is evident in terms of the discussion we have had with you with this morning in terms of trying to look at, I suppose, the political process that goes into developing national programs along with the constitutional process and what kind of balancing we want to do there.

What has been so helpful about your presentation is that you focused on the clear, present, now priority that is, if you like, the medicare of the 1980s. In looking at that program and how we can establish the kind of program we would like to see, whether we are living in Newfoundland, BC or Ontario, and looking at the Meech Lake accord, I think that is tremendously helpful as a specific example. We appreciate very much that you came today and focused on that. When we do get to the end of this journey, I hope we will have something to say that will be meaningful to that debate. Thank you very much.

Ms. Davis: Thank you.

Mr. Breaugh: Before you go to the next group, I knew this would come some time in my career: I have to admit I made a mistake. I knew there would be shock. Somehow in the reviewing of my notes on how the vote went in the Quebec National Assembly, I was left with the impression that no one had voted against it. Those who are members of the Parti Québécois would never forgive me--they probably will not anyway--if I did not recognize this morning that they voted against the accord. I do not know how this happened; computer error, I read the wrong matchbook, something.

Mr. Keyes: You cannot count.

Mr. Breaugh: I was wrong.

Mr. Chairman: We appreciate your statement.

I now call upon the representatives of Outreach Abuse Prevention, Donna Harris, the executive director, and Maureen Daigle, the founder and program developer, to please come and take a chair.

Mr. Breaugh: If you note where this group is from, you will know you

Mr. Breanah

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had better "listen up."

Ms. Daigle: I think he is trying to indicate we are from Oshawa.

Mr. Chairman: It is a pleasure, especially after the confession that the honourable member has made, to welcome you. We appreciate your coming. We have a copy of your submission and if you would like to take us through that, we will follow up with a period of questioning.

#### OUTREACH ABUSE PREVENTION

Ms. Daigle: I have elected that I will read the submission and that my colleague Donna Harris will field questions. I made that arbitrary decision in the car.

Mr. Chairman: Do all people from Oshawa work that way?

Ms. Daigle: That is right.

Mr. Chairman: Please go ahead.

Ms. Daigle: Outreach Abuse Prevention is a nonprofit charitable organization founded in 1983 in response to the tragic rape and murder of a nine-year-old child.

Since its inception, Outreach has been an organization dedicated to the belief that all adults are morally obligated to struggle for a society that recognizes children's rights and respects and protects them from emotional, physical and sexual abuse.

Sexual abuse of children, in particular, has long been ignored, tolerated and dismissed by adults. A child's right to an abuse-free childhood will begin when Canadians as a society recognize that children have the right to truly own their bodies.

~~The 1984 Daigle report investigated sexual offenses~~

C1100 follows

~~to an issue that children will begin to recognize that children have the right to truly own their~~

1100

The 1984 Badgely report investigated sexual offences against Canadian children and concluded, "Sexual offences are committed so frequently and against so many persons that there is an evident and urgent need to afford victims greater protection than that now being provided."

According to the Charter of Rights, "Every individual is equal before and under the law and has the right to equal protection and equal benefit of the law without discrimination based on race, national or ethnic origin, colour, religion, sex, age, mental or physical disability."

In our opinion, Canadian children, as individuals, in the most practical sense are not afforded equal protection or benefit of the law. Canadian children are discriminated against solely on the basis of their age. Until such time as children's status as a group is articulated in constitutional document, children's rights will not ever fully be recognized. Children are not equal.

The Meech Lake accord suggests a hierarchy of rights for adult groups but, again, ignores children's rights. By recognizing Quebec as a distinct society and not clearly articulating or protecting individual equality rights for women, the equality rights for women are in jeopardy.

The federally commissioned Badgely report observes: "What is required is the recognition by all Canadians that children and youth have the absolute right to be protected from these offences. To achieve this purpose, a major shift in fundamental values of Canadian and social policies by government must be realized."

Social policies which weaken women's equality rights will seriously jeopardize children's rights. Children's rights will only emerge in our society when women's rights are fully developed.

The opt-out clause of the accord works against the hope of comprehensive abuse prevention education programs ever becoming a reality in our society. This will make it harder, if not impossible, to promote the major shift in fundamental values and social policies called for in the federally commissioned Badgely report.

Ms. Harris: It is our organization's recommendation that you, as a select committee, go to our Ontario government and recommend that the Meech Lake accord not be approved until such time as it includes women's equality rights as established in the Charter, sections 15 and 28 and adding to clause 16 of the accord, also that the Ontario government not approve the Meech Lake accord until they delete or change the wording of the opting-out provision from the accord.

Mr. Chairman: Thank you very much. You have touched on one issue that I do not believe has been raised with us at all to this point, the question of children's rights. The linkage there between children's rights and women's rights is an interesting one, which I suspect we will follow up on in our questions, and we will begin with Mr. Eves.



Mr. Eves: I would like to congratulate your association on being here today. I think that any association that has on its advisory board Art Eggleton, Larry Grossman and Bob Rae need not fear any partisan political intervention by anyone.

I want to go to your recommendations. The first recommendation you make is one that has been made to this committee by many groups, as I am sure you are aware. Professor Baines indicates that if section 16 of the accord was amended to include everybody's rights and make it abundantly clear that nobody's rights under the Charter would be derogated from, that would be perhaps most satisfactory and include everybody.

Failing that, her bottom line was that this committee at least should suggest a reference to the Ontario Court of Appeal on that one precise issue. I take it you would be satisfied with either one of those solutions to your problem?

Ms. Harris: I concur with her that it would be advisable to put that wording in at that point.

Mr. Eves: I suppose the other point you make is somewhat more difficult in realistic terms to change, and that is the opting-out provision. We have also heard a few witnesses indicate--although it would not solve your opting-out problem--that if the word "standards" as opposed to "objectives" had been used in the accord, at least then the federal government might be able to establish standards Canada-wide, although provinces would still have the ability to opt out and have their own programs as long as they adhered to those standards.

1105 follows

(Mr. Eves)

objectives in the second at least, then the federal government ~~should be able~~  
~~to establish standards Canada wide, although provinces would still have the~~  
~~ability to opt out and have their own programs, as long as they~~  
~~these standards ??~~. Does an argument like that interest you? Or do you think  
that could be a solution to your problem or a compromise solution to your  
problem?

Ms. Harris: I think that the Badgley commission did try to put forth  
the concept that we do need a standard of prevention education for children  
across the country and that will implement and change social attitudes against  
the problem of abuse against children. What I am concerned about is that we  
set a national standard and recommendations that yes, these kinds of programs  
should be in place, but the opting out word is not clear enough that a  
province cannot choose--that because of whatever moral climate happens to  
exist in that province at that existing time, will not want to override that  
and say that it is not going to be included in their educational system or in  
their social welfare system.

Mr. Eves: Of course the national standard was set. The federal  
government always has the ultimate threat of withholding funding from a  
particular province if you do not happen to be living up to their standard.

Ms. Harris: But are we always satisfied that all funding is actually  
directed and funnelled in? I am not totally comfortable that--

Mr. Eves: You still have a basic problem with the opting out part.

Ms. Harris: Yes.

Mr. Chairman: Mr. Breaugh and then Miss Roberts.

Mr. Breaugh: Two of the areas that you talked about we are pretty  
familiar with. I think there is general agreement in the committee that there  
has to be at least some clarification of what happens to the Charter of  
Rights. Did we lose them so quickly?

Ms. Harris: Absolutely. Yes. Does it exist or does this document  
just go into the garbage can?

Mr. Breaugh: Yes. So I think that major question is one that we are  
in the process of exploring. It is one of those things where we certainly have  
different expert opinions and the time has come to sort out the different  
expert opinions and get what is actually in this agreement and whether there  
really is any lessening of anybody's rights. So we are thinking about that one

You are aware that we are going through the ??cautionary provisions to  
see exactly what they mean and how people would opt out. But one problem you  
have brought to us for which I am not sure there is a solution is the matter  
of children's rights. You have worked in the area. You know that in almost  
everything that you can think of from getting funding for programs, to getting  
recognition, to getting status, all of it is kind of flying in the wind  
because no one is quite sure of his ground here. I am not convinced that the  
Meech Lake accord, or anything else that we have got going at the moment gives  
me very much in the way of hope that we have got a clear direction around  
children's rights.

Mr. Breough

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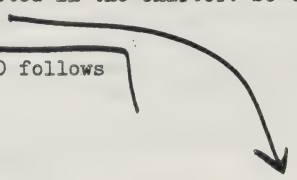
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I would be interested in your comments on this. My view would be that essentially we are in a grey area here, and until the courts or the law gets a whole lot clearer, we will live with things like the Young Offenders Act and how it is implemented, and we will continue to have programs that we all admit need to be done but are difficult to fund, because no one sees it really as quite their responsibility, or even if they do, they are not quite sure what their legal obligations are. I would be interested in having you respond for a little bit on some of those kinds of difficulties that I know we are going through and you are. I am sure programs like yours in every community in the country are having the same problem.

Ms. Harris: In terms of the equality rights for children, I guess we have felt that they have been best addressed so far by Canadian government by the Charter of Rights and Freedoms. Basically it has been women's responsibility oftentimes in Canadian society to work toward changing legislation or implementing programs that directly relate to children and their specific needs. Because women have instituted so many of those programs or tried to implement the changes that we feel are needed in Canadian society to better give children equal rights, the women are clearly stated in that and the kids just seem to fall under the umbrella under the wing of women being protected in the charter. So that is another reason why children being sort of--

C-1110 follows





just seem to fall under the umbrella, under the wing of women being protected in the charter. So that is another responsibility, as children being part of the appendages, the responsibility, especially in terms of the alarming statistics that the majority of children in Canadian society--it is raising constantly--are being raised in families that are being led by single-support women. The children growing up in those families do not have the benefit of the male leadership that might--

1110

Ms. Daige: They do not have the money.

Ms. Harris: Of course they do not have the money.

Ms. Daige: They do not have the money or access to the same equality rights.

Mr. Breaugh: Just to pursue this a bit. One of the reasons why I feel very strongly about the charter provisions being upheld is that it seems to me that if we are making any headway at all in things like crimes against children, it is under that umbrella that children have some legal entities, they have legal rights, and the mother in that family has some legal rights. I do not see us making quick progress, but we are headed in the right direction.

If, for example, we are going to try and get ourselves in a position to respond to the kind of alarming statistics about crimes against children--which I really think we have to do now--then we have to be sure of our ground here. We have to be able to say, "A child has a legal right, is a legal entity, and the Attorney General, or the Solicitor General, or whomever, has the legal responsibility to fund programs in that area." Those are all the kinds of grey things that we are struggling with now. As long as one minister could say, "I am not sure what my legal responsibilities are," they will always be at the bottom of a funding list. They will be an incidental program that they fund, if they think of it, and if there is some money left over. But it is the clarity of who is responsible and the clarity of the legal rights that are involved here that make it very difficult to have good progress in this area.

Miss Roberts: I appreciated your brief, ladies, and I also would like to just carry on from what Mr. Breaugh said. As you are aware, the Young Offenders Act sets out alternative measure and not all the provinces have dealt with those alternative measures. So even what is in place with respect to children to help children out is not equal across the country, or across Canada. So that is something that I would like to point out at this time. Indeed maybe that is some place where you could thrust some of your energy, as I am sure you have been doing in the past.

What I would like to do is look at the process with respect to children's rights. Changes have to be made to the charter. The charter is not perfect yet. With respect to section 15, perhaps some of women's equality rights have not even been dealt with by the courts and we really do not know how distinctive they are going to be. So we are interested in the process. The process that brought us here is flawed. It is executive federalism and we have been told that this is--I believe yesterday on many occasions--what has happened in Canada over the last hundred and some odd years, that there has

been a type of executive federalism. The charter has encouraged individuals and groups of individuals to come forward and put forward their views, their thoughts and their ideas. I do not think we are going to be satisfied with the type of executive federalism that may have existed or we believe to have existed in the past.

Have you thought of a process? How can your points of view, your interests in the Constitution, in the charter and in the Meech Lake accord be brought to the elected officials prior to them being closetted somewhere, whether it is at Meech Lake, or Victoria, or wherever? Have you thought of any way to do that, other than--

Ms. Harris: Are you talking about the accessibility of--

Miss Roberts: That is right.

Ms. Harris: Well, as members of parliament, all of you, I know, publicly do make your own individual efforts to be accessible to your constituents, and I am sure you do your best at that. But whether the voice is heard, especially in women's issues--our experience in being a fledgling organization ??three to one that has some recognition both on a provincial and a federal level funding-wise, has been a long, arduous--

F-1115 follows



(Ms. Harris)

~~Our experience in being a fledgling organization 22, that has been recognized both on a provincial and a federal level funding wise, has been a long, arduous struggle. It is not easy for the grass-roots kind of organization to exist in our country and to get the recognition for causes that are everybody's causes that are supported by such a commission as the Badgley commission.~~

Miss Roberts: May I just suggest to you that somewhere down the road children's rights have to be dealt with, as indicated.

Ms. Harris: Yes.

Miss Roberts: Perhaps one of things that you could do, as they already had various reports, is have a conference on children's rights, something to bring forward certain points, something that could be presented to various government for them to look at. These are the sorts of things. Is that a possibility or a probability? Would that be helpful for you? Would it be helpful to have another royal commission or something to pinpoint children's rights and how it should be dealt with in the charter? We need your input and we need to have your problems brought to the public's attention. Have you thought of any other ways?

Ms. Harris: The truth is, no. Actually, for us, this is a learning process. We recognize that to begin to move the work we do, which is paramount to us at this time, what we need to start thinking about is process, is lobbying government. That is a new step, a new development and a new direction that we have to think about taking.

Miss Roberts: If I might just have one more?

Mr. Chairman: You certainly may.

Miss Roberts: Victims of abuse: This has become a very important part, especially in the criminal system and how to deal with the victim. You have indicated that you have some concerns with respect to that. You are not suggesting there be anything on a national basis concerning that type of program that it should be dealt with by each province? Or, are you suggesting a victim's rights or something like that that is national?

Ms. Harris: Basically, what we are advocating is prevention, primary prevention prior to people becoming victims, giving children age-appropriate, comprehensive material that they can learn that their bodies are their own and that they have a right in Canadian society to speak up against abuse whether it be occurring in their family or their outside environment.

Miss Roberts: Thank you very much.

Mr. Chairman: Thank you very much for joining with us this morning. One of the things that I found particularly interesting--and it was not meant to be that way but your submission and the one just before you--I think some of these things that we are discussing in a constitutional context, it would be safe to say, certainly 10 years ago, maybe even five years ago, I do not know that we would have had this same discussion.

I have been struck by our public hearings in a kind of raising of



Mr. Chairman

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consciousness in a whole series of areas which perhaps in the past we would never linked to any kind of constitutional discussion or development. I think it is awfully important, therefore, that this kind of hearing take place and whatever process, as Miss Roberts mentioned, one of things we are going to do is deal with the question of process and how constitutional amendments are developed and how individual groups such as yourselves are able to say: "Hey, wait a minute. We want you to take this area into account."

As I said at the beginning, I think you are the first ones you have dealt with this question of children's rights and how is that impacted by the accord or just where ought it to be and what does that means in terms of the charter. Therefore, I think that helps us greatly in understanding some of the issues here.

In addition to thanking you for coming all the way from Oshawa, we in particular thank you for the points that you have raised this morning and for the answers to our questions.

Ms. Harris: Thank you very much.

Mr. Chairman: I would like to call upon the representatives of the Association of Liberals for the Amendment and Reform of Meech. If I might ask the Honourable John Roberts, pardon me, Roberts, who is getting into constitutional things here.

Interjections.

~~Mr. Chairman: I was looking for someone to interview this morning, and I found you, on the Confederation~~  
C-1120-1 follows.)



~~(Name removed)~~  
~~...the Honourable John Roberts pardon me Roberts who is sitting into constitutional things here~~

~~Interjections.~~

Hon. Mr. Chairman: I was doing an interview this morning, I hasten to add, on the Confederation of Tomorrow Conference so that has got me in a Roberts--If you would be good enough, perhaps Mr. Roberts to introduce the members of your organization. We welcome you all here this morning.

ASSOCIATION OF LIBERALS FOR THE AMENDMENT AND REFORM OF MEECH

Hon. Mr. Roberts: Thank you, Mr. Chairman. May I just say very briefly first, do not be embarrassed about your mistake. At one time I once received four votes in Brantford 15 years ago because my uncle was doing such a fine job as Premier of the province.

Mr. Chairman: Very good.

Hon. Mr. Roberts: I am here as the honorary chairman of ALARM which is, unlike some of the groups that have appeared before you, an avowedly partisan group. It is a group of Liberals and the main focus but not the only focus of our efforts is towards other Liberals. It is a group which developed spontaneously after the Meech Lake-Langevin accord was agreed to by many Liberals who felt that the accord did not correspond to what had been a traditional approach to constitutional issues as had been developed by the Liberal Party over the years.

From that spontaneous beginning, we have grown to a more sizeable organization based largely in Toronto but with chapters or affiliates in most of the provinces across the country. I say it is an avowedly partisan organization because our main approach is to deal with other Liberals, but we do not do that exclusively. In an attempt to carry on at the provincial level, since constitutional change is a process which engages both the federal and the provincial levels, we carry on at the provincial level the advocacy of the kinds of amendments which were presented by the Liberal Party during the House of Commons discussion of Meech Lake in Parliament.

I am here really simply to introduce the other members. Our chairman is Howard Levitt, and we also have Charles Cooke, David Healy and Mark Geiger who will be making essentially our presentation to you. Howard Levitt, I believe, is going to begin. Please go ahead.

Mr. Levitt: Mr. Chairman and members of the committee, if you were to ask your average Canadian whether he or she was to agree with the vision of Canada articulated in the Meech Lake accord, if you would do other than look perhaps somewhat askance or perplexed even most of those who have in a vague way, as Prime Minister Mulroney is so fond of suggesting, have an understanding that Quebec is joining in the constitutional family, understand little else.

Canadians are not aware, except for some of those most attuned, how the constitutional framework of their country is being changed, and being changed in a way that is contrary to the democratic, consultative process and approach

Mr. Levitt

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constitutional development which is heretofore characterized, Canadian constitutional development.


We analogized, that is the accord, at one of our ALARM meetings to that of injecting a little poison into a tree. People look on and do not notice any difference. It is apparent innocuous but as time, the months, the years go on, certain difficulties reveal themselves. The leaves on the tree begin to wither, but people say it is still not egregious. It is still not fundamental. The tree is still there. It is still living. It may not be thriving, but we still have a living tree.

As more time goes on and this analogy will develop into a federation of federations, people say: "My goodness, this isn't the vision of Canada that we grew up to believe in. This isn't the vision of Canada that brought us and our case to the Liberal Party. Let us save this tree." But by then it is too late. The tree is already dead.

The accord espouses a narrow vision of Canada--a narrow dual society. What is interesting in that is that it has not reflected reality for several decades. Our Constitution has to promote our Canadian values and our multicultural character, including that of our aboriginal peoples, that of a country where people can live where they wish and have access to universal standards of social security.

The Liberal Party--and we are speaking as Mr. Roberts suggested, as avowed partisan--has always been a great friend and, in fact, the party around which multicultural groups, women, aboriginals or ~~aboriginals~~

C-1125-1 follows





Mr. Levitt

*Coalition and* ~~we were speaking as Mr. Robert Suggs, as a Liberal partisan, as a~~  
~~partisan. The Liberal party has always been a great friend and is part of~~  
~~party around which multicultural groups, women, aboriginals~~ *have*  
~~to have found a home. The Liberals who support this accord say, "I am afraid~~  
~~to abandoned this past and this tradition."~~ *ALARM*  
~~We are concerned members of~~  
~~the process, that a court arrived at without input from groups across Canada.~~  
~~It is disturbing that contrary to normal constitutional amendments it is up to~~  
~~those challenging this accord to prove egregious errors. Not those advancing~~  
~~the initial constitutional reform to prove at this stage the egregious errors~~  
~~is almost an impossible task in an accord which is, first of all, fought with~~  
~~ambiguities and secondly, in a very real way, reflective of judicial judgement~~  
~~as well as personal philosophy. We are disturbed at the concerns raised and~~  
~~characterize them as carnage in the form of arguments that somehow this accord~~  
~~is sacred. But if any change is made including the almost motherhood one of~~  
~~the charter being pre-eminent that the whole accord will unravel.~~

Our reaction to that <sup>is</sup> ~~two~~ two-fold. First of all, if it is that fragile, in the face of participative amendments, how good is this accord for Canada. Secondly, we are not so cynical as to believe that amendments cannot be developed after full public hearings. Especially after analysis of the errors which have come to light in this draft. There is a reasoned way to proceed with constitutional reform. What we have to do as a nation, and speaking as partisans of the party, is to specifically ~~to~~ define and develop a consensus concerning our national objectives.

What we have done in this accord is simply to cross our fingers, *(tarot)*  
 shuffle the constitutional ~~deck~~ and trust the Supreme Court of Canada to then render a reading which reflects what should have been articulated in the first instance. It is my role to discuss the unanimity provisions. I am sure the members of this committee are aware that that was the practice from 1867 and 1981; to require unanimity in a constitutional amending form reflecting provincial rights. In that 114 years, only four unanimous amendments were made. ~~The~~ The main problem with the unanimity provision is that even when these egregious errors reveal themselves through time and constitutional and, of course, judicial interpretation, even when these egregious errors come to light, they cannot, as a practical matter, ever be rectified.

The one or two errors that are most apparent right now, with the unanimity provisions are those impacting and are somewhat interrelated on aboriginal peoples, and on the territories. It prevents those groups or territories from ever attaining a real partnership in Confederation. If I can quote for a moment from Mr. John Sheppard, president of the Yukon Federation of Labour, "This amending formula virtually guarantees that aboriginal people and Northerners can never be more than second-class citizens in their own country. A concept repugnant to us all as a Federation and as Northerners we see too many negatives in this amending formula for us to accept it. It is a constitutional straitjacket denying us a role and our own future and any hope we might have for future provincehood."

Let me quote one more time. This time from the Senate tax force report of the committee of the ~~whole~~ *whole*. Witnesses suggested that Premiers might want to annex, at some future point a portion of the territories in exchange for their vote in favour of the creation of new provinces and what would be left. If the provinces are going to be attaching future conditions to this consent to the

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further transfer of powers to the territories, then the interest of Canada as a whole will be split among many provincial interests with Northerners the only non-participants in this process. I do not know why there has not been more consideration given to one of the egregious errors in this future federal-provincial conference where supposedly future amendments are going to be debated and perhaps passed.

(C-1130-1 follows)



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~~given to one of the egregious errors in this future federal provincial conference where supposedly future amendments are going to be debated~~

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It has to be clear, it is clear from the accord, that with respect to those future amendments, other than Senate reform and fisheries, no other subject can even be brought up, least of all discussed or voted upon without unanimous consent. One selfish or even capricious Premier can veto even discussion on anything he or she does not wish to deal with. Further, the Prime Minister can no longer set the constitutional agenda, for example, with respect to getting Senate reform back on the agenda. Even in those two areas.

What ALARM has done in our very few months of existence is we have made a decision philosophically that the Liberal Party, given our particular history, is the party that has a background that is most antithetical. It is fundamentally antithetical in this accord and that is the basis for organizing. As a result of that decision, we have sent letters to every Liberal legislator across Canada. We have been lobbying on provincial levels in different provinces. We have circulated our petition at the recent Toronto and district convention. We had over 85 per cent of the delegates approached sign our ALARM petition. We have sent letters to the editors of most newspapers. We have been involved in fund-raising and, perhaps of greatest importance, co-ordinated with other Liberal groups and individuals across Canada. We are also supporting the Broadview-Greenwood resolution that is going to be before the Liberal Party of Canada (Ontario) conference on March 25. In our contacts, on a very preliminary basis, the resolution itself is only a week old, but in our context the large majority of riding associations that we have spoken to have said they are going to be supporting those resolutions, which mirror the ALARM resolutions on the issue and to ??your attention.

~~Mr. Cooke:~~

If I could thank the members for inviting us. I would like to turn your attention to page 18 of the brief that deals with the federal spending power issue, which I am sure you have heard quite a lot on. I would like to, hopefully, add some light on this issue as well.

Our primary concerns are twofold with respect to the amending formula. First, it is the ambiguity of certain words, those being the change from the Meech Lake accord to the Langevin Block and the addition of initiative in the spending power clause. The question we ask is, why was that added? What is the difference between program and initiative? Is there any difference? We understand from reports that was a particular concern of Quebec and Premier Bourassa to add that word. We have questions with respect to that.

The second ambiguity is reasonable compensation. What is reasonable and in what terms? Who gets it? When and on what terms do you receive that reasonable compensation? On what basis do you receive that reasonable compensation? That is a primary focus of my discussion is the basis, as I read it, as we read it as an organization, of a province being entitled to receive reasonable compensation.

The principle concern with respect to that is twofold, and I would suggest that it is double-edged sword, a double-edged attack on federal



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spending power and on constitutional amendments permitting social programs as well. That is the two words "compatible" and "national" objectives and why is that?

First, if I can quickly focus on a real life example of medicare, which I heard mentioned before. The original medicare legislation as enacted in the mid-1960s was unlike other social programs at the time. Generally, what we saw in quite a few examples were cost-shared conditional agreements between federal and provincial governments. Where a federal government, through its constitutional powers and legislation, would enact legislation that would in effect askew provincial priorities. Provinces, to get funding, would be required to match their priorities to those of the federal government. Those provinces would be required to sign their name, their John Henry, to that agreement. It was a contract. As a result of that signed contract, we got cost-shared programs--

C-1135 follows



~~As a result of that signed contract, we got cost shared programs.~~

Now with respect to medicare, medicare was at the time a very controversial federal-provincial issue. Quebec and Ontario were leading the fight against it at the time. If I take the example for the purposes this morning of Quebec, at the time Premier Lesage was in favour of medicare, the principle that it meant, but he opposed the program because at its early stages the federal government was proposing to establish medicare nationally by a shared-cost program, which would require the Premier of that province to sign the name of that province to a program.

The secret, the invention which broke the deadlock eventually, was a new creation, a new innovation and that was the establishment by the government through its legislation of four principles, comprehensiveness, portability, accessibility and public administration. The federal government said, "There will be no cost-shared agreement. Your province has to sign your name. What we have is a national program. These are the principles and they were enunciated as principles is that original medicare legislation. Province, if you want funding, fine. You can set up your own program. You do not have to sign your name, but these are the four principles that you have to comply with."

Now subsequent to that, we had in 1983 the Canada Health Act, which of its essence and its ability to do what it did, which was to stop extra billing, the assault on the principle of universality, the ability of the federal government to pass that legislation and to have the consequence it did, which was to force provincial governments to pass corresponding legislation to ban extra billing, was because the provincial governments would not receive funding, dollar for dollar, for every dollar that was given to doctors on the basis of extra billing. The reason for that was because the fundamental idea of extra billing was contrary to the principle of universality.

Now what does that mean with Meech Lake? A provincial government can now--what would it have meant in the mid and late 1960s if we had that Meech Lake federal spending power provision? It would mean that a provincial government would say, "You cannot force me, federal government, to pass legislation by withdrawing moneys, because I have a program that is compatible, which is to say capable of existing alongside your program. It is compatible with the national objectives of your program. What are your national objectives? The establishment of a national day care program." We as a province have a national health care program. We have medicare in our province. What you are saying to us is you want us to go beyond that. You want us to step beyond the line of the word "objective" and you are telling us, federal government, that you want us to comply with your principle of universality." The provincial government will say, "You are behind the times, federal government. We have complied with your national objective, but you are asking us to comply with the principle and that is beyond what section 106 of the spending power provision requires."

First, what we have here is a blow against this federal spending power. The second tool is the constitutional amendment section in the Meech Lake accord. Previously in the Constitution Act, 1982, amendments were allowed with reasonable compensation to be given by provinces for amendments that related to transfer of provincial powers to the federal government in matters of education and related cultural matters. With Meech Lake, we have seen that narrowing removed and now it is any amendment transferring provincial powers

Mr Code

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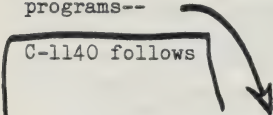
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to the federal government. A province could opt out and receive reasonable compensation.

We would suggest that in fact the provision with respect to amending power is even worse than the spending power because, as bad as it is, the spending power does provide a condition for the provision of reasonable compensation, that being compatible with national objectives. The amending formula provision does not even provide that. It just says a province can opt out and receive reasonable compensation. The question is for what? For anything. They could literally, we suggest, take their money and apply it to any sort of program. It is those two tools that in the past have allowed social programs, whether they be by constitutional amendment, shared-cost programs--

C-1140 follows





~~It is those two tools that in the past have allowed social programs, and they be by constitutional amendment, shared cost programs for the use of the federal spending power, that will be no longer. What is the political fallout of that? Twofold. Actually morefold than that.~~

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One that other commentators have mentioned, and Al Johnson in particular has mentioned, that Canadians almost see it as a right of citizenship, bound up with the right of citizenship the ability to go anywhere in this country, to receive the same quality-based programs anywhere. With Meech Lake we fear that will not be the case. Yes, Canadians move from one part of the country to other parts for reasons of economic betterment, but they do not move and they have never had to move for reasons of social programs. We fear with the failure of social programs to be national that we will instil in the vocabulary of the country the ability to move from coast to coast on the basis of social program service.

There is much more I could say, but in the interests of having everyone give a fair shot, I will stop at that. I will just say one final thing. The more I read, the more I researched on this topic, the more I became concerned with this particular provision. If I can say, it has been said that Meech Lake is a concern of constitutional experts and lawyers. It does not affect concern the man in the street, your voters and your constituents. We say to you that is wrong.

I think that in any event under all circumstances it is absolutely wrong with respect to the spending power because there will be no more medicares. There will be no more Canada pension plans. There will be no more old age assistance programs. There will be no more hospital care programs. Why will there not be any more of those programs? Because the program design and the program model, which led to those programs, will no longer be possible with Meech Lake. At least I can say to my children and then my children's children that I took a stand, Liberal or not. I came before this committee. I was involved in a ALARM. I let my MPP know where I stand. I hope that in your contribution in your report you take that responsibility that you have to your children and your children's children as heavily as I do.

Hon. Mr. Roberts: May I ask David Healy.

Mr. Healy: I would ask you to turn to page 8 of the brief, the "distinct society" clause. The first thing we can note about section 2 of the accord--

Mr. Chairman: Excuse me. Would you mind, just in terms of the recording, if you could speak up into the mike? Unfortunately when we lean back, we lose you.

Mr. Healy: The first question to be noted about the accord is that the term "distinct society" is not defined. Without reading the explanation, Senator Lowell Murray states basically he did not want to categorize or limit the characteristics of Quebec society. However, my brief does outline a variety of definitions and they appear from a variety of sources. The first in the Supreme Court of Canada, others from interest groups, such as La Federation des femmes du Quebec. Premier Bourassa also gives us a definition

and I would like to read that one, "The French language constitutes one fundamental characteristic of our uniqueness, but it has other aspects as well, such as our cultural, our political, economic and legal institutions."

Another is from Professor Gerald ??Beaudoin, the constitutional expert, who says that, "Because the language and culture of its population is French and because it operates under a French-inspired law, Quebec is a distinct society."

These definitions encompass a very wide area, everything from language to law to culture. A great majority of the definitions referred define Quebec's distinctness with reference to its French character. Others, however, differ, but in any event on page 10 of my brief I have highlighted Professor Ramsay Cook's concern that distinct society is not clearly defined. He asked in his brief in front of the joint committee what it means, and if it does mean something, please tell me what it means, because it is an important term going into our Constitution and ought to be accurately defined.

C-1145 follows



~~What does it mean and if it does mean something, please tell me what it means because it is a ~~important~~ term going into our constitution and it has to be accurately defined. If we do not define it, we are at best going to have a calculated ambiguity with reference to Quebec and at worst, a quagmire of unsolvable proportions.~~

Senator Forsey, another constitutional expert, noted that in all the definitions that have been supplied thus far there are no references to bilingualism, to multiculturalism or aboriginal peoples. Basically, they talk about a French society. There is no mention of multiculturalism in section 2 as a fundamental characteristic of Canada. There is no mention of aboriginal peoples in section 2 as a fundamental characteristic of Canada.

The defenders of the accord tell us: "Do not worry about that. Section 2 is only interpretive. It cannot breathe life into a jurisdiction that does not exist. It does not, in other words, give governments more or new powers."

Then again, if you look at the references by Mr. Remillard, the comments by Senator Forsey, the comments by former Prime Minister Pierre Trudeau, you see that there is something much more than an interpretive clause there. If you look at page 11 of my brief, I make references to these quotations. I am not going to read them but there is one I would like read. It is by Mr. E. Fortier who is very much a defender of the accord, and vis-a-vis the charter, he said, "...if it were decided to exempt the....charter from the....distinct society clause....that would mean the death of the Meech Lake accord, period."

Senator Forsey concludes, "This is surely a devastating reply to the contentions that the distinct society clause does not really mean much."

Of course, the "distinct society" clause means a great deal. It is much more than an interpretive clause. It is defended vociferously by people or politicians or whomever who stand to gain a great deal with it.

We are also told by Professor McWhinney to basically stop crying about the Constitution, that divisive forces have abated in Quebec and that it is time to rebuild. However, all we have to do is read the newspapers. Mr. Parizeau is on the move. We are quite clear. We know exactly what his goals are. We know also that he wants to make a unilingual French society. He has said so clearly and he may have opposition in Quebec as a result of that but, nevertheless, we know where he stands. I do not think separation is dead in Quebec at all.

I would like to also talk about the Charter of Rights and in my brief on page 12, I have made reference to a case that I think has direct link with Meech Lake and that is the Quebec Protestant schools case. Under that case, the government of Quebec in 1977 tried to provide that, in Quebec, instruction in elementary schools and in secondary schools was to be in French except under certain circumstances.

The government of Quebec argued that sections 72 and 73 of Bill 101 was necessary, that it was a long-term threat to the survival of the French-speaking community and that Bill 101 was established as a collective right in the interest of the collectivity, i.e., Quebec's population. At the very bottom of page 12, the government's white paper of 1977 states, "The Quebec which we want to build will be essentially French."



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Individuals, if necessary, had to just take a second step in the interest of the collectivity. Well Mr. Justice Deschenes said no. That kind of an argument, the collectivity over individuals, is based on a totalitarian conception of society and human beings were too important.

I ask you to also look at the other aspects of Canada, other than Quebec. We are told that the Parliament and the provincial legislatures outside of Quebec are to preserve a fundamental characteristic of Canada, that being the French-speaking Canadians centred in Quebec and present elsewhere *and*

~~and so forth...~~  
C-1150-1 follows



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(Mr. Healy)

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~~old that the Parliament and the provincial legislatures outside of Quebec are to preserve a fundamental characteristic of Canada, that is, the French speaking Canadians centred in Quebec and present elsewhere and English-speaking Canadians concentrated outside Quebec and also present in Quebec.~~

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However, the Quebec government is to preserve and promote. There is a difference between the two. If a government is to preserve the characteristics that I just mentioned, could it not be that a group who are very opposed to the advancement of bilingualism could say, "All right legislature, we are essentially an English province and it is your job to keep it that way." That is what section 2 of the Meech Lake accord tells you to do. This idea was advanced by the Dean of Queen's law school, Dean John Whyte and you can see his quotation on page 14 of the brief.

There, again, is another problem. Of course then there is the problem of can the charter affect Meech Lake accord. My brief makes reference to the much-quoted remarks of Madam Justice Wilson in the education act case and these words basically say that the charter cannot invalidate another provision of the Constitution.

Ms. Mary Eberts said that these words could mean that the charter is immune from affecting the accord. Other constitutional experts, Professor Lederman, say no. I say that any words emanating from the Supreme Court of Canada cannot be treated as lightly as Professor Lederman does, although I have the greatest respect for his constitutional knowledge.

In any event, if the charter is ambiguous, we have section 16 of the accord. It makes reference to two sections of the charter, sections 25 and 27. Now Senator Lowell Murray against steps up and says, "Well, here is why we put that in."

On page 15, he says that references to aboriginal peoples and multiculturalism refer to collective rights not to individual rights. Again, we have this reference to the collectivity versus the individual. That is why they put those sections in there. Basically, what we are told is that the collectivity is protected but not the individual.

On page 16, I have some references to the way provincial governments have dealt with the minorities in Canada over the years and I will not go into that in the interest of time.

My conclusion on page 17 is that there are lots of distinct societies in Canada and that multiculturalism and aboriginal peoples are a fundamental part of this country and that section 16 should be amended to include the charter.

Hon. Mr. Roberts: If I could ask Mark Geiger to conclude.

Mr. Geiger: I am doing to the last section and if I can find the page for you, I will address you to it. It is page 24, Meech Lake accord and national unity.

I want to do something a little different than what you have heard so

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far and deal with the future. Hindsight is always 20/20 but foresight seldom is and in my view too much of the debate about the Meech Lake accord has been about changes to present powers and what does this do now and too little has been about what will it do in the future as this country continues to develop.

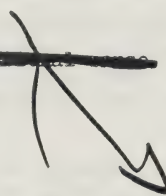
I want to crystal ball gaze 10 or 20 years from now and see what we will get with Meech Lake.

To some extent, where we have been over the last years can direct us as to where we are going and we may have to look at that. It is my submission that the way things are is not always the way they are written. I give you the Constitution of the USSR as an example. If one were to read that Constitution, one would think that was the most free country in the world, yet we all know that is not the case.

Certainly, as a lawyer, I know that always collective agreements do not tell the whole story. If you meet the president of the company, that does not necessarily mean he is the guy with all the power. So power and influence are a lot more than just what is on a written page.

We live in a very large and a very beautiful country; much of it is uninhabited. If you look at this country from a demographic distribution point of view, you will see that we are a thin line running across the border between the most powerful country on earth, the United States, our neighbour to the south.

~~\_\_\_\_\_~~  
C-1155-1 follows





(Mr. Geiger)

~~... and if you look at this country from a demographic distribution point of view, you will see that we are a thin line running across the border between the most powerful country on earth, the United States, and the most powerful country to the south.~~

Having a national sense of identity in such a country would be a problem in the best of all possible worlds. It has been exacerbated in our view, in Canada by a number of developments which I want to briefly go over.

If you look back to the foundation of this country, what was happening when it was being founded. Just finished a very devastating civil war in the United States. The Fathers of Confederation of this country clearly, in my view, looked at the Constitution in the United States and fashioned one in Canada that gave very strong powers to the federal government, to the central government. They did that for a reason, because the debate in the States that led to the civil war was not just about slavery, it was about state's power versus federal power. Historians, I do not think, would question that.

If you looked at the Constitutional documents, United States Constitution versus the Canadian Constitution, I do not think anyone would argue with the analysis that those documents, taken on their own and not looking at the facts, one would conclude Canada had a far more centralized society and a far more centralized federation than the United States. Yet very few people I suggest to you would argue that that is in fact the case. Canada is far less centralized than the United States. In fact, many have said it is the least centralized federation in the free world. Why is that the case? Because the documents do not tell the whole story.

What I want to look at is the effect the Meech Lake Accord will actually do, not what it does to the powers and all the various interpretations, what will it do, in fact, over the few years that we are going to look at.

To quote Blake on page 24, who was, as you may know, a distinguished parliamentarian and attorney general under Mackenzie. He said the future of Canada depends very largely upon the cultivation of a national spirit. We have to find some common ground on which to unite, some common aspirations to be shared, and I think it can be found in the cultivation of the national spirit. The history of the beginning of the country was very much about a real effort to do that. And the building of the railway, to develop those east-west links so that you could allow this to happen.

I suggest to you that we do have a spirit here in this country, and anyone who watched the Olympics could not help but realize that. But I suggest that is sometimes in spite of politicians and not because of them. I suggest that this country, because of its demographic distribution and because of the great neighbour to the south and because there are going to be regional differences between various regions of the country, will always have a problem with regional squabbles. But that has been exacerbated in this country for two reasons: first of all, even though the Constitution established the federal government as the pre-eminent government in my view, the provincial governments have developed tremendous expertise and now all the provincial governments together spend more money than the federal government does. What has happened too often is that there have been squabbles between various regions of the country. Anyone who has travelled in this country and has gone

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out west or any other part of the country, will find that there is almost a visceral hatred towards the central part of the country, specifically Ontario and more specifically, Toronto. I soon learned when I went out west to never tell anybody I was from Toronto. That is talking about the people on the street. Why is that? Well, part of it is because, I suggest to you, politicians in the provinces have sometimes used the spectre of the federal government to gain their own advantage. This has sometimes been because the federal government has not had representation legalistically in that particular province, and that has exacerbated the situation.

Over the years, in my submission, the provincial governments have become the spokesman for their constituents for matters that were really matters of national importance, and had nothing whatever to do, necessarily, with provincial competence. This starts to focus the attention and the loyalty of the population on the provincial level and not on the country as a whole. So, the people start to have loyalty to their province and not to their country.

It is my submission that the Meech Lake Accord enhances that and sets up all sorts of areas where that process is encouraged. The reverse process, the one that we should be attempting in this country to encourage, in my view, is discouraged. Now, how does that happen? Well, it happens in a number of ways. And I just want to briefly mention, if you think about the problems that we have had just in the last 20 years...

C-1200 follows



(Mr. Geiger)

~~process. The one we should be attempting in this country to have~~  
~~view is discouraged. Now, how does that happen? Well, it happens in~~  
~~number of ways. I just want to briefly mention, if you have seen the~~  
~~problems we have had just in the last few years, where there have been issues~~  
between the national level and the provincial levels where provinces have  
taken stands--I would give you right now that free trade--we have the premier  
of this province taking a very strong stand on that issue, and other  
provincial premiers taking a strong stand.

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What does Meech Lake do to exacerbate the situation? Briefly, I start  
this on page 28. The first one is the first ministers conferences. That is  
where we got the document we have some problems with right now. The first  
ministers conferences, you do not need a change in the Constitution to have  
these, they have been happening all the time. But we now have legislated in a  
constitutional document a requirement that there are two of these every year.

Now, premiers are powerful people. They are far more powerful, in my  
submission to you, and seem to be far more powerful--which is the important  
thing--than members of federal parliament and then senators. And so interest  
groups and citizens and other people who want to achieve something in a  
federal area of competence are going to direct their loyalty, they are going  
to direct their briefs to their provincial governments and not to their  
federal government in order to obtain something.

I suggest to you, over time, the conferences that take place with these  
provincial premiers and the federal premier will, in fact, become a  
super-legislature and will become a very powerful group. But it is not a  
federal institution. It is a group of provincial institutions coming together  
and to a very large extent, there is a danger that these people will be vying  
back and forth for their share of the goodies. And that their citizens--and  
this is the crucial issue--will look to their provincial governments to  
represent them on federal issues, and loyalty and adherence will gradually  
over time focus on the province.

The Senate amendments are the next issue I want to look at. Here was an  
area where we could have addressed the problem to produce at the federal level  
an institution which we already have in existence and which everyone has  
suggested needs to be amended, to produce an institution at the federal level  
which would have been able to give this regional representation. Instead of  
doing that, we have given the provincial governments effectively, the power to  
appoint their senators, and made the Senate then some sort of creature of the  
individual provinces in their structure in their position as a province. I  
suggest to you that that is exactly the opposite direction to the direction we  
ought to be going. We ought to be trying to create a federal institution which  
will focus loyalty at the federal level and give people that ability.

The Supreme Court. By itself, I do not suppose the changes to the  
Supreme Court would, in and of themselves, be a problem, but together with all  
the others, they increase the sense of provincialism as opposed to nationalism.

Immigration. There has been a lot of comment. This is the report of the  
special joint committee on the Senate and House of Commons. There is a lot of



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discussion in that about what the heck this area of the Meech Lake Accord means. I think there are a lot of questions about it. But clearly, the possibility exists that each of the individual provinces are going to be able to set up their own rules for immigration, and that people outside this country are going to start to look at this country not as one country but as a series of fiefdoms with different rules for entry. And again, we are looking to the province for your loyalty and not to the country.

Final thing I raise is: what about free trade? The premier of this province has come out in opposition to free trade. I suggest that there is a very strong likelihood that despite his opposition, free trade will be passed and it will become law in this country. What about Meech Lake and free trade together? What about a situation where we are destroying the national cohesiveness--and I say this not purposely. The Meech Lake Accord wants to bring Quebec in, that is the goal; to increase the unity of the country. I suggest that over time, in fact, it does the opposite. With free trade, we strengthen the north-south, back and forth between Canada and the United States, and at the same time we weaken. I suggest that it is a possibility that in a community of communities, one of the communities might decide that the southern community has more to offer than the northern. I think that is something that ought to be looked at very carefully.

So, conclusions of all of these things that we have talked about. In my view, and in the view of the group that I am here talking on behalf of today, the Accord attempted to ensure national unity and enhance this national...

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~~In my view and in the view of the group that I am here talking with today, the accord attempted to ensure national unity and enhance the national spirit, but it is inherently flawed and there are egregious errors. The egregious errors are not obvious, although some of them may be. It is our belief that the various provisions of the accord that we have dealt with and others that we have not had time to deal with, will exacerbate a national malaise that has been with us for a long time. This tendency to provincialism. This tendency to focus your loyalty at the province and not at the country as a whole.~~

Instead of creating a new structure which would encourage all the regions of the country to feel part of a greater whole by assuring them of effective representation at a national level, we have instead institutionalized the concept of provincialism. Instead of encouraging and fostering a national spirit that Blake spoke of more than 100 years ago, we have unfortunately in my view, built this system where the natural loyalty and the commitment of the citizens will be directed to their provincial governments and not to their country as a whole. Instead of seizing on our opportunity to reform the senate, an existing institution and change it so that it appropriately enhances the perception of true national representation, we have made such changes in our view effectively impossible.

While we are trying to unify the country by bringing Quebec into federation, something that all of us support, we have unwittingly sown the seeds of future disunity and in our view we planted them on fertile soil.

On behalf of our group, we urge this government and this committee to reconsider its position.

Mr. Chairman: Thank you very much. You have covered a very broad range of issues and we appreciate that those are expanded upon in many parts of the brief. Just before going to questions, I would like to make one brief comment and one question. At the end of the brief you urge this government to reconsider its position and you said the committee to do the same. I just want to underline the committee is in its hearing process and it has not come to our conclusions and that is why among other things we are hearing you. I just wanted to make that clear.

Mr. Geiger: Can I make one comment on that point? This is one of the things that we come back to about the first ministers' conferences. The first ministers in this case have made a commitment that they are not going to change this. With the greatest of respect to this committee, the Premier (Mr. Peterson) was quoted in the Sun talking about whether or not there were going to be any amendments to the Meech Lake accord. That is one of the problems. That shows one of the problems in our view of the Meech Lake accord. The fact that at these first ministers' conferences, the first minister has to put his name on the dotted line, becomes extremely difficult for this House to change that. It is going to be very hard for the Liberal Party, the Liberal majority government in this House to realistically propose an amendment because of that. That shows one of the problems of the Meech Lake accord.

Mr. Chairman: I appreciate the point that you are making. I simply underline what I have been saying throughout the hearings, that we are a committee of the Ontario Legislature and we are charged to report back to them. We are moving along a most interesting and fascinating road and we have not come to the end of it yet. In our view, we should be listening, thinking

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and there is time and there are many things that can evolve in that context. I feel it is terribly important and you are quite right, obviously people in all political parties, different areas, are in different kinds of dilemmas and you are quite right to underline the process and that is certainly one of the things that we plan to address in our report. Whatever happens to Meech, there are going to be other meetings and other amendments presumably. We have to set out clearly how we as legislators would like to be involved in that.

If I might, I just wanted to clarify as well, the document that you gave us from the Broadview-Greenwood, just so we understand clearly, is it ALARM?

Hon. Mr. Roberts: It is not ALARM inspired, but it does represent the views of it.

Mr. Chairman: Thank you very much. We move to questions.

Mr. Eves: Mr. Chairman, I guess I should ask permission if I can ask a question not being a Liberal.

Mr. Chairman: Sure.

Mr. Eves: I say that with tongue in cheek.

Hon. Mr. Roberts: But you seem so reasonable that we have hopes.

Mr. Eves: I would just like to point out that the Liberal Party in my opinion at least does not have a monopoly on concern for Canada's future and I agree with many of the points that are made in your brief.

It was pointed out to us by one of your federal colleagues, Mr. Don Johnston, that some one by the name of Sir John A. MacDonald had something to do with Canadian---

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~~expressed concern for Canada and its future and I agree with many of the points that you have made in your brief. It was a good idea to do it in the way you have done it. I don't know, but I think that someone by the name of John A. MacDonald had something to do with Canadian federalism as well.~~

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I strongly feel that this is an issue which is really nonpartisan, although I appreciate the realities involved, a majority government especially. I have always felt throughout that this is an issue that is above partisan politics and really should be the subject of a free vote in the Legislature and I wanted to know what your viewpoint on that was.

Mr. Cooke: In our drafting exercise we had contained in our brief, in its written form, exactly that prescription. We decided to do it orally rather than in writing, but we feel that the provincial government if it is placing in effect the burden on ordinary citizens and witnesses before this committee to show that there are egregious errors, rather than taking upon itself the burden, which it should, because I do not believe it had a mandate to do what it did in 1987 in June. However, despite that fact, we believe that this is becoming increasingly a question of conscience, a question of country. Constitutions go beyond party loyalty and go beyond provincial boundaries, because what a provincial government in Ontario does with respect to Meech Lake, affects minority rights across the country.

We think given that it is a matter of conscience, there should be a free vote in the Legislature.

Mr. Levitt: Mr. Eves, as well, our federal leader, John Turner, that is our federal leader, not yours, was quoted last week that it is an issue of conscience and in context of certain federal candidates in the Toronto area, he has no objection to their taking a different position than he has on the accord, because it is an issue of conscience and would obviously support a free vote for that reason as well as many others.

Mr. Eves: Looking at the Broadview-Greenwood resolution, on the second page, you make I think some very good suggestions with respect to changes. The one with respect to the Charter of Rights and Freedoms superceding or taking precedence over the accord in section 16. It is one that many groups that have appeared before us, a point that many groups have made. They all seem to be unanimous on this one issue.

The other one about national standards for example, is one that has been raised several times by many delegations. The one about the unanimous provision and Canadians in the territories are Canadians as well, and aboriginal peoples are being shortchanged. That too I believe. There are many other concerns that you touch upon in your brief and I guess the question I want to ask is one which the chairman touched upon and that is I suppose is your bottom line position, can it be summarized on page 2 of the Broadview-Greenwood resolution?

Mr. Levitt: It was all the ALARM amendments originally.

Mr. Eves: Okay. Mr. Johnston, and some others who have appeared before us, believe that even if issues such as that were addressed by way of amendment, he still believes that because of the process and because of some

of the principles that he thinks are inconsistent with Canadian federalism, he believes we have to start over and there is no amount of amendment that we can make that will make the Meech Lake accord a working agreement. Do you agree with that or not?

Mr. Levitt: The position of ALARM is that if those four amendments are attained, we will be satisfied. We have to deal with politics and reality as it is, not as we might like it to be. At this particular juncture, we will be satisfied with those four amendments.

Mr. Eves: Thank you.

Mr. Elliot: I would like to direct a question to Mr. Levitt with respect to the first ministers' conference, the format of the accord. Before I do that, I would like to make a couple of observations. We are covering a permanent record here and there are two things that I would like to discuss. One I would like to clear up and the other I would like to make a comment on.

One of the presenters attributed a statement to the Premier of Ontario that he is against free trade. I have in fact never heard him say that. What I have heard him say.

Mr. Geiger: He is against the agreement.

Mr. Elliot: He is against the agreement and I really would not want that to be in the record on a permanent basis, that he has ever said any place that I have been at any way, that he is against free trade.

Mr. Geiger: I am sorry. I did not make it clear. I meant the agreement as it now stands. He is opposed to that.

Mr. Elliot: Right.

Mr. Geiger: But notwithstanding that, I suggested it was a good chance in my view that it might well be passed in any event.

Mr. Elliot: The point I want to make there is that a lot of us share that point of view as is now stated.

The other thing is, I think because something appears in the Sun does not necessarily make it a true fact in its entirety. It may very well be taken out of context with respect---

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(Mr. Elliot)

~~...because something appears in the Sun does not necessarily make it the~~  
~~fact in its entirety. It may very well be taken out of context with respect to~~  
a longer kind of dissertation. I think we should keep that in the right  
perspective.

Mr. Chairman: Are you suggesting that the Sun does not always shine?

Mr. Elliot: Clearly. The third observation I would like to make, and I am a part of this as well as you people are, too, I would like to compliment the group Alarm for taking the position they are in public, the way they are, because I think it is part of a process in the party's system that we are all part of right now that is going to be very helpful and healthy in the long run.

Up until now, if you crossed the party in any situation, any one of the three parties, I am not just talking about the Liberal Party, politically it was not very wise to do that kind of thing. In the climate that we are in these days honest concern, in a context as the one we are in, specifically constitutional amendment, it is very necessary that if those of us are opposed to a straight-on party view that we make that very clear as we can in the forums that are available.

It is in that context that I would like to ask you the question with respect to the first ministers' conferences, because they are set. The first will begin in the fall of 1988, the way I understand it. Senate reform and fisheries are definitely two of things that have been written into the accord.

The question I have to ask is with respect to the C part of that. It is item 50(2) part C. It says there, "Such other matters are agreed upon."

From the way you referred to that area, I suppose that unanimity was something that was in your mind. I would like you to clarify that a bit if you would not mind. Do you view that C part of section 50 to mean that all of the premiers and Prime Minister have to agree with any other item that would be added to an agenda?

Mr. Levitt: That is precisely how I interpret it, particularly in the context of the general unanimity formula for amendments. It appears clear to me and, as well, from reviewing Senator Forsey's remarks in the senate it is his view as well. If something is disputed as a subject for discussion by one of the premiers, or by the Prime Minister, then clearly it is not agreed upon for discussion. That seemed to me the plain wording of the document and, in particular, the context of the unanimity formula for amendments. It seemed to be what the intent was of the drafters.

Mr. Elliot: The observation I would like to make, with respect to that whole unanimity section, is that there are eight sections where unanimity is required at the present time by the Meech Lake accord. The old amending formula, 50 per cent representing at least seven of the provinces is going to apply in the other areas.

To me, Senator Forsey and other people like that, that determine that is read into the unanimity part of that is a point of view. It should be cleared up. But I do not necessarily share that point of view. I am still not convinced by you quoting him, or your interpretation of unanimity, because I



am to be convinced on that relative to the accord. Is there any other clarification you can make with respect to that?

Mr. Levitt: I am simply quoting him only to indicate that it is merely not an errant interpretation, or one that is totally idiosyncratic. But this is one of the areas that where unanimity is required. My view of particular sections of the accord are that the most fundamental sections, the areas that we have been talking about today where we can see the areas, as most agree, are the areas where unanimity is required for amendment. That is the source of our concern.

Mr. Chairman: To note, Mr. Harris, Hon. Mr. Roberts, Mr. Offer and Mr. Cordiano in responses.

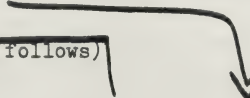
Mr. Harris: I guess you are telling us to be brief.

Mr. Chairman: I just thought it would be of interest to people.

Mr. Harris: I will try to zero in on just one area. I, too, congratulate you on being here for your presentation. I would be remiss if one of the Progressive Conservative members did not congratulate you for getting past Ian Scott making it to the table.

Second, I would like to first of all say that I understand where you are coming from in all of what you presented. I agree with a lot of it. I mention that first in pointing out, with the one exception, that the free trade reference I find either totally irrelevant. I do not know why it was brought up. If it was brought up in the context of federal-provincial powers, or what it has to do with Meech Lake, my understanding of all of the thrust is that the provinces, when it comes to areas like this, and strong federal powers, you would--

(Tape C-1220 follows)



(Mr. Harris)

~~... either totally, or relevant, I do not know, it was brought up. If it was brought up in the context of federal provincial powers, or that it has to do with Meech Lake, or understanding of all of the things that the provinces when it comes to areas like this and strong federal powers, you would be in favour of the Prime Minister telling the premiers, "We really do not think what you think on this issue as particularly significant." It certainly should not have predominance. If it was brought up in that context it seems contrary to the rest of your presentation.~~

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Mr. Geiger: Do you want me to answer that?

Mr. Harris: If it was brought up in the context on top of Meech Lake, the north-south, as you tried to suggest, there are many of us who would argue that the exact opposite is the case.

In any event, I find it totally irrelevant to the discussion that is before us on Meech Lake. Do you want to comment on that for me?

Mr. Geiger: I said this. This particular government in Ontario right now has expressed--and the correction was quite right--reservations about the current trade agreement with the United States. Nevertheless, it may move forward. If it does go forward it seems to us that we will be forging stronger links with our neighbour to the south.

If you look at the brief, which I did not quote completely, we will be dissolving, to some extent, the links that hold Canada together as a country while, at the same time, strengthening links with our very powerful neighbour to the south.

The quote, which you will see on the pages, "If you have a divided house you cannot stand, especially next to a friendly giant." The point is that one of the provinces may very well decide to have even stronger links with the community to the south.

There are people out west, if you have travelled through western Canada, there is a very large group of people out there. It is a minority right now, that would very much like to secede from Canada and join the United States.

Mr. Harris: I understand that. I am not sure how relevant it is to me.

Mr. Chairman: Hon. Mr. Roberts wanted to make a comment.

Mr. Harris: Let me just say that many would argue that without a freer trade agreement with the United States that will precipitate provinces out faster than proceeding with the agreement.

Hon. Mr. Roberts: I think the question is really a very good one. We suffered, even though we have taken a long time for the problems and compression. I think from the remarks that we made one could easily have drawn the conclusion that we believe in the federal power and we do not believe in the provincial powers. I think that would be a mistaken interpretation.

Hon. Mr. Roberts

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One of your colleagues, Miss Roberts, spoke about the increasing prevalence for executive federalism, and the intermingling of provincial and federal responsibilities. Clearly Meech Lake is the injection into federal institutions of more provincial participation.

I think the reference to free trade is relevant in the sense that it shows that that process is or can be a two-way process. That just as the provinces will become more engaged in federal issues, we see in the free trade proposals as put forward by the federal government, also an implication that they stated from time to time about the necessity of a provincial government that may be reluctant to go along with the consensus which has been enshrined in the agreement that has been made internationally and with the support of some other provinces.

Your remark is right but, on the whole, we believe that the Meech Lake accord undermines federal power but I do not think we would want to be interpreted as saying we want to undermine provincial powers. We think that this process at Meech Lake may be damaging to both levels of government by the degree to which it pledges, or makes less clear responsibilities for government in Canada by forcing both the provincial and federal levels to be in each other's pockets at the same time.

Mr. Harris: I see.

Hon. Mr. Roberts: I think that is the only real relevance of the free trade issue. It is an example as to how whatever one's view of the substance of the free trade issue where we see a federal government that seems to be prepared to--I do not mean to be misleading--lean on the provincial government, but it leads it through its process in areas which are misconcerting. It could have some impact on an area which is one of provincial responsibilities as well.

Mr. Harris: I want to ask one question. You can lead me to it. That concerns the federal spending power. In your remarks you referred to Meech's intrusion of the provinces into federal spending powers. Others may argue that it is there to clarify how the federal government would be able to intrude on provincial spending powers. All that aside, I guess one of the things that worries me about Meech is it goes to the question of what should be in the Constitution? Most of us find it appalling that first ministers' conferences are going to entrench it. Is that the purpose of the Constitution? Is to say you are going to do this? Is it the purpose of the Constitution to say that this will be the agenda of the next one? Presumably that will be amended after the next one.

~~What should be in the Constitution? When you talk about spending powers everybody that has come before us has talked~~

(Tape C-1225 follows)





~~Is it the purpose of the Constitution that this will be the agenda of the next one? Presumably, that will be amended after the next one.~~

What should be in the Constitution? When you are talking federal spending powers, everybody who has come before us is talking about them in the context of social policy. I guess my question to you is should any of this be in the Constitution? Is that the purpose of a constitution for a country? Is it to talk about social policy, how it is going to be funded, how it is going to be developed and whatnot? Would we be better off if there was no mention or less mention in the whole area of spending powers?

The less that was in there before, history has shown us federal-provincial programs have been able to evolve. You have pointed out ways in which stumbling blocks have been overcome in the past. Is it appropriate that we start getting this into the Constitution? I have a really great worry. I wonder whether it is, because I wonder what is going to be next in the Constitution. If we are going to have to put every little thing in there, then you might as well rip it up and start all over again and go back to what a Constitution is really for.

Mr. Cooke: You raise a very good question. I think there is a tendency among civil servants, politicians, leaders, to constitutionalize and put into print everything. Many people have said one of the magics of our Constitution is its flexibility and adaptability over time; that many things were not in it such as the cabinet or first ministers' conferences and they were created; that the British-North America Act is in a sense an organic document. One of the philosophical problems with Meech Lake is its tendency to crystalize everything in black and white in a constitutional form, and I think there is that danger.

We have made our four points, our recommendations, where we would like changes as to the wording of that. We do that in response to the political reality as it is, in response to the fact that this was one of the demands of Quebec. The whole constitutional process was, so to speak, called the Quebec round, and it was one of Quebec's five demands that this be dealt with in the Constitution.

We are working within the context of that political reality. Therefore, we are saying that certain words--"compatible" we have problems with, "objectives" we have problems with, "initiative" we have problems with, "reasonable compensation" we have problems with--that those things should be changed, improved, for other words such as "consistent" instead of "compatible;" "objectives" to "principles" or "standards."

Perhaps the best solution would be that it does not belong in there. I have personally no objection to that idea, but I think we are working in the political reality, and that being so, we are prepared to suggest amendments as to certain words. The best and most ideal situation would be to remove it.

Miss Roberts: I was interested in some of your comments. Some of them concerned me with respect to the natives, saying that if we let Meech Lake go, they are going to be second-class citizens or such and such, words to that effect.

Right now, if Meech Lake is not dealt with, we already have a

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second-class government, that is Quebec, and they are concerned. There can be no changes in our Constitution, no changes in our charter, and we have seen that there can be no meaningful negotiations with respect to the native peoples until we have a government in that is out at this time. So those are things that have to be considered and that is the political reality you are dealing with.

You have indicated very clearly today that you think the Meech Lake accord is not the deal you would have made. That is basically what you said. You have said, "If you change it four ways, it will make it close to the deal we would have made," but that would change the deal completely. It would change certain parts of the deal.

What I am saying to you is, how do we get Quebec in? How do you think we should do it? You can say, "They are in already," but they do not believe that and they are not acting on that basis. So how do we get them in and what is the process? We all understand that what has gone on here might be inappropriate, although that is the way it has been done in the past in most areas with respect to constitution-building. Those are my two questions, how do you get Quebec in and--

Mr. Levitt: Let me answer the premise first of all, that is, that there is far more latitude now in dealing with the aboriginal peoples than there will be under the Meech Lake accord with its amending formula.

To deal with your specific questions, how do we get Quebec in, the same process we have had before. Mr. Bourassa's demands were far fewer, as I am sure you are well aware, than those . . .

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(Mr. Levitt)

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~~I've dealt with your specific questions, not the whole thing. In the process that we have had before, Mr. Bourassa's position was that we are well aware, than these agreements that were ultimately made. Mr. Bourassa's consent to the accord or to some agreement similar to the accord could have been obtained giving away far less in the areas that we now consider to be egregious errors than had to be done.~~

In a number of the contexts that we talked about today, Mr. Bourassa, in our view, would not consider it a slap in the face of Quebec, as some defenders of the accord have suggested, to say: "We have problems in those areas. They do not relate to the rights of Quebec necessarily, but they are problems for the rest of Canada and they are problems for national unity. Let us meet again and talk about those areas, because those are areas of real concern and real problems. Desirable as it is to have your signature on this Constitution, we cannot bifurcate and divide--it may end the image and view and vision that people have of this country--just in return for that signature."

I think Mr. Bourassa, or at least others in Quebec who have already come forward, can understand that.

Mr. Cooke: If I can add to that, I think there are real concrete ??buoys with respect to the five demands. If you read the five demands closely and you look at the result, there are lots of things in here that not only were not mentioned by him but are further than where he goes.

I will give you one example, the Quebec "distinct society," a demand of Quebec's. Nowhere that I have ever seen or read did Premier Bourassa ask that it be a mandatory interpretive clause, that the whole Constitution, including the British-North America Act, the Constitution Act 1982 and the charter be subject to it. Nowhere did he say that the "distinct society" provision would be worded as it ended up being. Nowhere did he say that it had to be in the body of the Constitution rather than in the preamble. There are some examples for you.

Miss Roberts: But all you are saying is that we do not know that, because that negotiation was behind closed doors. We do not know that.

Hon. Mr. Roberts: No. When the responsible ??Quebec minister presented the proposals originally, the provision for the "distinct society" provision was in the preamble, not in the substance of the document.

Mr. Offer: Thank you very much for your presentation.

One of the topics which you dealt with at some length in your presentation centred around the whole question of "distinct society," yet when I read the association's resolution, that particular issue was not really dealt with.

I am trying to understand what your position is with respect to that. Is it, number one, that there is a philosophical problem, with the whole term "distinct society" being in disagreement, or is it that the concept itself needs some definition--and you have spoken about that in your brief--or third,



Mr. O'Far

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is it that the whole question of "distinct society" should be amended on an expansion type of basis? I just do not know really where you stand on that particular concept, especially in the light of the resolution you tabled with us, which really does not speak to the "distinct society." On the other hand your presentation, almost a full third of the presentation in terms of paper, dealt with it. So if you might just please clarify that position for me.

Mr. Healy: I would first of all comment on 2A of the resolution, which I think seems to deal with it, albeit maybe a little vaguely. I think our position is that when you consider the implications of it, the words "distinct society," you get an awfully wide perspective. You have Quebec politicians who are quite convinced it means an awful lot.

We are concerned with the minorities in Quebec, i.e. the English, the native peoples and any other minorities, women in Quebec, aboriginals. What is going to happen when a Quebec government tries what it did in Bill 101? Will a charter provision like section 23 be able to be used to stop this, in other words to protect individuals and minorities? I think it is a very deep concern when you look at the wording of section 2.

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Mr. Healy

~~...used to stop this, in other words, to protect...~~  
~~...when you look at the...~~  
section 2, "Quebec preserve and promote your distinct society." This is a guidance to a Legislature, and it is the only Legislature in the entire country that can preserve and promote if you want a strict reading of section 2, whereas, the others are different. Ontario, the federal parliament and all the other legislatures are different. We can only preserve what we have. It freezes things, as I think Mr. Cooke mentioned. It crystallizes things and the Constitution should not do that. It should allow things to evolve. We have an initiative of bilingualism by the federal government and we have MPs who are resisting it. This kind of thing is stopping a free flow of bilingualism across the country. A distinct society can do that.

Hon. Mr. Roberts: Can I make some comments in 30 seconds. ?? does cover it. The concern about the "distinct society" provision is first, it will have an impact on the interpretation of the Charter of Rights, and second, the "distinct society" provision will provide a different jurisdictional responsibility for the province of Quebec than the jurisdictional responsibilities which are held by each of the other provinces. In a federal structure, it is undesirable to have one province as a constituent element of that federation which has different jurisdictions and responsibilities from the other provinces.

Mr. Offer: I notice there are people who are waiting to ask question.

Mr. Chairman: I appreciate that knowledge.

Mr. Offer: The chairman usually brings that forward just when I am asking questions.

Mr. Chairman: You probably have just a very brief follow up.

Mr. Offer: As it turns out, that was not the case. Another point with respect to clarification as opposed to what I was really going to ask. In your discussion, talking about the preservation and promotion aspect, your presentation seems to say, I think even in the reading of your submission, that the preservation of a fundamental characteristic of Canada, as shown in the accord, is that of the federal government and the provinces, other than Quebec. Is that your interpretation?

Mr. Healy: I think that section 2 bears that out.

Mr. Offer: Are you saying, in other words, that the role of the Parliament of Canada, the provincial legislatures to preserve the fundamental characteristics of Canada excludes Quebec?

Mr. Healy: No, there are two.

Mr. Offer: ??

Mr. Healy: No. I do not have a copy of section 2 right in front of me. I am sorry. No, I could not say that, of course not.

Mr. Offer: That is what I took from your presentation.

Mr. Healy: I just moved the specific. That is all I am trying to do. Vis-a-vis Quebec it has its own special role. Yes, it has to preserve the fundamental characteristic of Canada. At the same time it has to preserve and promote its distinct identity, whatever that means.

Mr. Cordiano: I will try to be brief. I just want to deal with one particular subject area. I note the Association's memorandum where you say the groups most concerned by the provisions of the accord, you mention native Canadians, multiculture groups, ?? minorities, women, etc., and it looked to the Liberal Party traditionally for leadership and support.

On page 15 of your brief I note, and I want clarification on this because I do not want to take it out of context, but just to further define what you mean by this: You make mention halfway down the page, and I will quote from the section: "What do we make of section 16 of the accord? Why are certain charter rights, for example section 25 aboriginal rights, section 27 multicultural, not affected by section 2 of the accord?" In that you seem to imply that indeed the Charter of Rights encompasses multicultural rights.

When I look at the Charter of Rights, and I have had some discussion with legal experts, they seem to almost always agree on this point, that section 27 of the Charter of Rights is . . .

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(Mr. Cordiano)

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... they seem to almost always agree on this point that section 27 of the Charter of Rights is an interpretive clause. It does not bestow or guarantee rights to individuals, and section 27 clearly have in the language the word "interpretive" and "preservation and enhancement of multicultural heritage of Canadians." That is the charter will be read in such a fashion as to be interpreted in a manner consistent with that. I am reading and paraphrasing from the charter, section 27.

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This resolution as well--many other groups that have appeared before us are concerned about minority rights and about multiculturalism, put forward the notion that--this is a multicultural country and that our official policy, at the very least, is one of multiculturalism. Are you concerned at all about what may happen to multiculturalism, given your concern for section 2 of the accord and various other elements in the accord, or do you feel that section 16 of the accord addresses those concerns?

Mr. Healy: I would say, sir, in response, if you want to define the fundamental characteristics of Canada, you have to be realistic. Statistics Canada will show you that, yes, we are a multicultural country. Even in the city we have quite a few pockets of different nationalities. We are well aware of that. If you want to be accurate and say Quebec is distinct, and of course, it is distinct, then let us say that Newfoundland is distinct. You are getting into a hodge podge of distinctions. You are going to have a war and peace on your hands for a Constitution. I agree with your interpretation of section 27. I apologize that I just made reference to it and I did not mean to be overtly technical, and I agree.

Mr. Cordiano: That is why I say I did not want to take it out of context. Looking at that whole issue, I think that, in looking at the Broadview-Greenwood Association memo. Is it a policy statement it is going to be advancing at the next convention?

Mr. Levitt: It is a resolution. ??

Mr. Cordiano: A resolution, okay. This is the basis on which you feel that the accord should be amended and you would agree with this. I just felt that, having heard from a number of groups that feel very strongly about the fact that somewhere in the Constitution multiculturalism should be enshrined in a much more forceful way that simply leaving it as a charter provision, as an interpretive clause in the charter, and I just wanted to know if you would agree with that. Certainly it can be addressed, perhaps not now, perhaps not with this accord, but certainly it can be addressed in the future.

Mr. Levitt: We are afraid that very many things cannot be addressed in the future because of the amending formula.

Mr. Cordiano: An amending formula would not affect that situation. I do not think that the amending formula would preclude someone from bringing an amendment for making multiculturalism part of the Constitution, as opposed to part of the Charter only, which it is now.

Mr. Levitt: Let me put it in this respect. The fundamental characteristic of Canada is referred to as essentially a linguistic dual one. That has not been the fundamental characteristic of Canada for 70 or 80 years,

Mr. Levitt

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and that is apparent as soon as one walks around these halls, least of all, walks outside. We might as well have a Constitution, we should have a Constitution that reflects our view of ourselves, not something which was a political tradeoff in a particular context, and fundamentally creates an interpretive dynamics which vitiates division of Canada that we as Liberals have, and that we as a province have, and that is as succinct a way as I can put our concern.

Mr. Cordiano: But I do not see in your resolution a call for an inclusion in the Constitution in the most effective manner to make multiculturalism a fundamental characteristic of this country in a constitutional context.

Mr. Cooke: I just point out that it is not our resolution. We endorse it as the Broadview-Greenwood resolution.

~~Mr. Cordiano: I am sorry, I mistook it to be your resolution. I gather . . .~~

1245-1 follows

~~Mr. Levitt: I would just point out that it is not our resolution. We~~  
~~address it. It is the Broadview-Greenwood resolution.~~

Mr. Cordiano: OK. I am sorry. I mistook it to be your resolution. I gather that you agree with the resolution and that is why I pointed out that you have put forward similar proposals or similar amendments that you would like to see and these constitute the basis on which you would put that forward.

Mr. Levitt: This is the Broadview-Greenwood resolution, which we will be supporting along with many other Liberals at the LPCO convention on March 25. It is true that one of its amendments is not that which I specifically proposed just now. If ALARM was to draft a perfect Constitution, of course section 2 would be radically redrafted, but we are dealing at this point with the ??art of the possible. We as an organization have to propose amendments we think have some real chance of succeeding. You as a committee, and ultimately as a government, have to propose amendments that are not going to alienate all of the other provinces and have some hope of succeeding as well. In that spirit, we are supporting the Broadview-Greenwood amendments, which are generally very good amendments. In that spirit, we are addressing that today.

Hon. Mr. Roberts: Perhaps I can just say one brief thing in clarification. The effort of ALARM and these resolutions are pointing out the things in the present accord, which should not take place, but we did not take as our function to draft a new Constitution for the country and, therefore, respond to what I think is a very legitimate concern by listing all of the things that we thought ought to be put in. That would be a much longer, much more complex and much more difficult exercise.

Mr. Chairman: As our history has shown.

Hon. Mr. Roberts: In a sense what we are saying, if I can put it bluntly, we are trying to point out that this is a \$3 bill that we have not replaced with our own \$10 bill.

Mr. Cordiano: The only reason I raised it is the context of section 16, which you have mentioned throughout your brief and which I gather gives some concern about the Charter of Rights vis-à-vis the accord.

Hon. Mr. Roberts: Right.

Mr. Cordiano: That is why I mentioned the fact that multiculturalism is brought in in that section. It fits in the context of all that.

Hon. Mr. Roberts: It does. I was just trying to explain, we were not putting forward the positive suggestions of what should be added and that is why we did not go on and deal with this issue more explicitly.

Mr. Chairman: Mrs. Fawcett with the last question, after which we will exercise our constitutional right and have lunch.

Mrs. Fawcett: Very quickly, gentlemen. I would like your thoughts on the idea that if this--I do not know whether to say if or when this dangerous



Mrs. Fawcett

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free trade or bilateral agreement goes through, and Quebec is not in the Constitution, is that not a real chink in Canada's armour or even a hole? Would not Quebec then be ripe for the picking because of several things that they have that the United States very much wants? Would not Canada be in a very weak position when that free trade agreement goes?

Hon. Mr. Roberts: Are you talking about with a free trade agreement?

Mrs. Fawcett: Yes.

Hon. Mr. Roberts: If that agreement goes forward, the impact that will be--

Mrs. Fawcett: Goes in and the Meech Lake Constitution, let us say it is not passed and Quebec is not in?

Hon. Mr. Roberts: Perhaps I could comment that I am not sure whether it is entirely in order, but let me try to respond.

Mrs. Fawcett: OK.

Hon. Mr. Roberts: Those of us who were very much involved, both in the constitutional changes and the fight against the referendum, found, I think, that the strongest argument or I should say one of the strongest arguments as Quebecers was the sense that if they do separate from Canada, they would be losing the advantages, which Quebec had from being part of the economic union of Canada.

Mrs. Fawcett: Right.

Hon. Mr. Roberts: Once the free trade agreement goes through and goes into effect, if it does, then that argument loses its potency because under a free trade arrangement in North America, Quebec would not lose any economic advantages, which it has from the free trade area, by leaving Canada. This is a point which has been made very clear by many of the PQ intellectuals and by Mr. Parizeau himself, that the entry into free trade removes one of the strongest arguments in a practical way that Quebecers had for being part of the Canadian federation. There used to be the phrase that Quebecers for profitable federalism, profitable because it guaranteed them the economic advantages of being part of a larger market. That argument for staying in Canada disappears once, and if, we move to a North American free trade agreement.

Mrs. Fawcett: Thank you.

Mr. Levitt: If I could make one remark to the chair. Your natural right to go to lunch now is not a constitutional right at all. It is in the Ontario Employment Standards Act, just showing that all inherent and important rights need not be in a Constitution.

Interjection: But he is not an employee, so he does not have it.

Mr. Levitt: Good point.

Mr. Chairman: The collective agreement we have is a little different

1250 follows

Mr. Chairman: The collective agreement we have is a little different as elected members. Gentlemen, on behalf of the committee, I would like to thank you very much for coming and sharing your thoughts with us. I suppose for some of us it has been perhaps a little more poignant given our political backgrounds, but I think, as was mentioned by Mr. Elliot earlier, it is important in something like this that these views are aired and they aired in public. We appreciate you coming today. Thank you.

We stand adjourned until two o'clock.

The committee recessed at 12:51 p.m.







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(Printed as C-15)

SELECT COMMITTEE ON CONSTITUTIONAL REFORM

1987 CONSTITUTIONAL ACCORD

MONDAY, MARCH 21, 1988

Draft Transcript

SELECT COMMITTEE ON CONSTITUTIONAL REFORM

CHAIRMAN: Beer, Charles (York North L)

VICE-CHAIRMAN: Roberts, Marietta L. D. (Elgin L)

Allen, Richard (Hamilton West NDP)

Breaugh, Michael J. (Oshawa NDP)

Cordiano, Joseph (Lawrence L)

Elliot, R. Walter (Halton North L)

Eves, Ernie L. (Parry Sound PC)

Fawcett, Joan M. (Northumberland L)

Harris, Michael D. (Nipissing PC)

Morin, Gilles E. (Carleton East L)

Offer, Steven (Mississauga North L)

Substitutions:

McGuinty, Dalton J. (Ottawa South L) for Mr. Elliot

Villeneuve, Noble (Stormont, Dundas and Glengarry PC) for Mr. Eves

Clerk: Deller, Deborah

Staff:

Bedford, David, Research Officer, Legislative Research Service

Witnesses:

Individual Presentations:

Behiels, Dr. Michael D., Associate Professor, Department of History,  
University of Ottawa

Morse, Bradford W., Professor, Faculty of Law, University of Ottawa

De l'Association des juristes d'expression française de l'Ontario:

Richard, John D., président

Rouleau, Paul S., ancien président

LEGISLATIVE ASSEMBLY OF ONTARIO

SELECT COMMITTEE ON CONSTITUTIONAL REFORM

Monday, March 21, 1988

The committee met at 2:03 p.m. in Algonquin Salon A, Delta Ottawa Hotel.

1987 CONSTITUTIONAL ACCORD  
(continued)

Mr. Chairman: Good afternoon, ladies and gentlemen. Bonjour. Alors nous commençons nos séances cet après-midi ici à Ottawa, et peut-être avant de continuer, je vais demander à notre collègue M. Morin de dire quelques mots.

Mr. Morin: I am very pleased to welcome you all to the most beautiful city in Canada.

Mr. Breaugh: When do we go there?

Mr. Morin: There is plenty to do, and I am sure if I can be of any help, you will not hesitate to get in touch with me.

Alors, je vais vous souhaiter la bienvenue officiellement dans notre belle capitale, votre capitale, et au nom de M. McGuinty et aussi de mon voisin à l'est, M. Villeneuve, soyez les bienvenus. J'espère que si nous pouvons vous aider - pas dans tous les domaines - mais si nous pouvons vous aider, cela nous fera plaisir de la faire.

M. le Président: Bon, merci beaucoup. C'est notre première présentation de l'après-midi.

Before beginning with our first witness, the clerk of the committee has a few notes to make.

Clerk of the Committee: Only one. On your agenda you notice that at 11 o'clock tomorrow morning the Canada Council on Social Development is scheduled. They have moved to 11:30 a.m. on Thursday, March 24.

Mr. Allen: I wonder if there is an additional copy of the agenda. Having bypassed my office last week very deliberately, I--thank you very much.

Mr. Harris: When are they appearing?

Mr. Chairman: Thursday at 11:30.

Clerk of the Committee: There will be revised agendas coming in tomorrow.

Mr. Chairman: If I could just note, tomorrow evening members will be free, in which case Mr. Morin can assist, I am sure.

Mr. Morin: Mr. Breaugh has a big smile. I do not know why.

Mr. Chairman: I invite Professor Michael Behiels from the department of history, the University of Ottawa, to please come forward. First of all, welcome. It is a pleasure to have you with us this afternoon. Our procedures



are fairly simple. If you would like to make your presentation, we will follow that up with a period of questions. We all have, I believe, a copy of your paper.

PROFESSOR MICHAEL BEHIELS

Dr. Behiels: I wish to begin by thanking the members of this Ontario select committee on constitutional reform for the opportunity to express my views on some aspects of this very important and far-reaching document. I am happy to start off these proceedings in Ottawa and I welcome you all to our fair city.

I have been following the debates or, perhaps more appropriately, this "dialogue des sours," since April 1987. The Meech Lake accord will soon reach its first anniversary. Unfortunately, from my point of view, Canadians have very little to celebrate.

Is the Meech Lake accord legitimate? Since the summer of 1987, I have witnessed several dozen individuals, groups and organizations and I have read submissions from literally hundreds of other individuals and organizations representing a very broad spectrum of Canadians from coast to coast and reaching to the Arctic circle. These groups have expressed profound reservations about both the process and the substance of the 1987 constitutional accord.

This accord, even if it is eventually ratified with the 11 first ministers and the 11 legislatures, will not be legitimate in the eyes, I think, of a large percentage of Canadians. It will most certainly never be looked upon as legitimate by the peoples of the Northwest Territories and the Yukon, whose representatives were excluded completely from the talks at every stage. The francophone and anglophone linguistic minorities will be left in the unenviable situation of having to plead for privileges from their respective governments.

Moreover, all this discussion and debate, which is taking place after the deed is done and duly carved in stone, will not legitimize what the politicians have done or hope to do. Instead, this protracted debate has and will continue to focus critical attention on the undemocratic nature of the existing constitutional process and on the egregious flaws of the accord itself. Many highly respected scholars, including Professors Alan Cairns, Albert Breton, Ramsay Cook, Bryan Schwartz and John Whyte, and organizations too numerous to mention have fleshed out the serious contradictions, ambiguities and pitfalls of virtually every clause of the accord.

The Constitution Act, 1982, was considered flawed by the Mulroney government because it was not legitimate in the eyes of Quebec's nationalists and separatists. The Prime Minister and the premiers, in attempting to appease the nationalist-minded government of Robert Bourassa by accepting its five demands and offering even more, are proposing a constitutional coup de force which will, if accepted, undermine the significant social and democratic achievements of the Constitution Act, 1982.

The patriation of the British North America Act, 1867, with an amendment formula and, most important, the entrenchment of a Charter of Rights and Freedoms represented a profound social and political shift in Canada's constitutional development. Our Constitution was no longer going to be exclusively a matter of a power relationship between federal and provincial

governments. The charter, because its function is to determine the relationship among individuals, groups and the state, brought new groups and social classes into the constitutional process.

In sum, our Constitution was both Canadianized and democratized in such a way as to reflect the fundamental socioeconomic and cultural changes that had occurred in Canadian society since the war. As a result of this concordance, the Constitution Act, 1982, despite its minor shortcomings, was easily legitimized in the eyes of the vast majority of Canadians.

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By its undemocratic process and its content, the Meech Lake accord represents a constitutional counter-revolution. The first ministers, through the entrenchment of their annual constitutional conferences, the extension of the unanimity rule to important sections of the Constitution, the de facto transfer of Senate and Supreme Court appointments to the premiers and the undermining of the charter with the ambiguous "distinct society" clause, have effectively blunted further development of the people's Constitution. It is this larger political reality that I think constitutes the egregious flaw of the accord.

Quebec challenges the 1982 accord: What the Quebec government of René Lévesque failed to achieve after its re-election in 1981, the Liberal government of Robert Bourassa was determined to accomplish through political blackmail. That government simply refused to co-operate in any serious constitutional discussions until Quebec's minimum demands had been granted. In some measure, that contributed to the dead end or the deadlock of talks with the aboriginal peoples. Those four meetings really achieved nothing.

The one major development that precipitated the unravelling of the 1982 equilibrium was the dramatic and wholesale shift in the voting patterns of Quebec's citizens. Of course, this had all started in the election of 1984. Once the election was over the Quebec electorate had some second thoughts about its decision to support the Mulroney Conservative Party and then began to move all over the electoral map, so to speak, and the polls started to go up and down. That jeopardized the potential of the Mulroney government getting a second mandate.

That really opened the door for Robert Bourassa and the Minister Responsible for Canadian Intergovernmental Affairs, Gil Rémillard, and they decided to put on the push for what were determined to be Quebec's five minimum demands. Bourassa and his nationalist colleagues jumped at signing the Meech Lake accord because it was such a marvelous deal for the nationalist, political and bureaucratic elites of Quebec.

Thanks to Mr. Mulroney, Quebec received more than it asked for. The accord will allow Quebec's governing bureaucrats and politicians to legislate in favour of the preservation and promotion of Quebec's majority francophone society without fear that such legislation will be overruled by the courts. Bourassa agreed to the Meech Lake accord only because the "distinct society" clause took precedence over the Charter of Rights and Freedoms. René Lévesque, had he received such an offer from his arch-enemy, Pierre Trudeau, would have jettisoned the separatist nationalists in a flash and signed immediately.

René Lévesque's closest constitutional adviser, Claude Morin, and his Minister of Finance, Jacques Parizeau, have given their blessing to the



accord. An aggressive and shrewd Quebec government could use the accord, according to Morin and Parizeau, to disrupt the federal system and move Quebec step by step towards independence.

It is clear from the testimony before the special joint committee of the Senate and the House of Commons, it is clear from the testimony of Senator Lowell Murray, Minister of State (Federal-Provincial Relations) and his deputy minister, Norman Spector, that Premier Bourassa fully intended that the "distinct society" clause should allow the government of Quebec to legislate in favour of the preservation and promotion of the francophone majority of Quebec without fear that the Supreme Court could use the charter to strike down those legislative measures that violated the charter, except for aboriginal and multicultural rights.

The charter under attack: The Meech Lake accord, which everyone now agrees constitutionalizes enhanced powers for the premiers, runs against the increased liberalization and democratization of the Canadian society which has been under way since the Second World War and, more specifically, since the 1960s. As Bryan Schwartz has so aptly written, in his *Fathoming Meech Lake*, the Meech Lake accord is "first and foremost a 'charter of rights for the provincial governments.'" Professor Schwartz goes on to state:

"The 1982 accord strengthened the rights of individual Canadians; the 1987 accord does not contain a single provision that enhances the court-enforceable rights of anyone. The 'non-derogation' section of the 'Quebec clause' ensures that absolutely nothing in the section can enhance the legal position of an individual in litigation against a government. On the other hand, a major purpose of the 'Quebec clause' is to bolster the position of the Quebec government in court challenges brought by its linguistic minorities."

Since the 1960s, Canadians have experienced and grown to appreciate a far more democratic, participatory and pluralistic society, one which places a premium on the rights and freedoms of the individual and of minorities. Thanks to a quiet but effective evolution in our educational, social welfare and health services, our society has become progressively less elitist. Certainly there remains plenty of room for improvement, but the 1982 Charter of Rights and Freedoms symbolized the guarantee of these tremendously significant changes in our social structure and our values and norms of behaviour which underlay that social structure. The Trudeau government did not impose the Charter of Rights and Freedoms upon Canadians. Indeed, the immense popularity of the charter among all groups and social classes is a striking reflection of the fact that the charter's time had come.

The premiers feared this new Canadianism symbolized by the Charter of Rights and Freedoms because it enhanced marginally the role of the national government. More important, the charter enhanced and constitutionalized the democratic rights and freedoms of individual Canadians and minority groups. The Meech Lake accord gave the premiers their first opportunity to reassert provincial prerogatives and entrench in the Constitution both the provincial compact and the two-nations theories of Confederation.

In their eagerness to obtain the veto, control over the Senate and the Supreme Court, and have fisheries on the agenda in perpetuity, the premiers were all too eager to grant Quebec not merely provincial equality but rather special status via the "distinct society" clause. This Quebec clause, which is the *raison d'être* of the Meech Lake accord, has generated the greatest amount of anxiety and discussion, because of its potential to unravel the gains represented by the Charter of Rights and Freedoms.



What is at stake here, really, in this constitutional debate are competing visions of Canada. Since the end of the Second World War, and in particular since the 1960s, we have been working towards a bilingual and multicultural vision of the country. That was painful at times. We moved by fits and starts and trial and error, but I believe we were making significant progress, particularly in central Canada and New Brunswick, but less so in western Canada. I think in time other parts of the country would have followed the direction in which Ontario and New Brunswick were moving. The charter does, in fact, turn us around 180 degrees.

At the heart of this debate that we have been going through since last summer over the Meech Lake accord resides a very profound divergence about the very nature of our country. Rather than leading to a national reconciliation as predicted by the Mulroney government, a national reconciliation which to some extent is necessary, it is becoming increasingly clear that the stage is once again being set for a very bitter, prolonged and divisive battle over linguistic and multicultural policy.

It is this author's considered view that many of the positive achievements in these two areas over the past two decades are going to be jeopardized by the government's attempt to constitutionalize in this Meech Lake accord a conception of the country which is diametrically opposed to the bilingual and multicultural vision accepted and cherished by the vast majority of Canadians.

Will Canada indeed become a country in which its citizens will have the same civil, gender, linguistic, ethnic and socioeconomic rights from coast to coast, or will Canada develop into a patchwork quilt of provinces providing divergent sets of rights to Canadian citizens? The Parliament of Canada is presently dealing with two very crucial and, I argue, long-overdue legislative measures, the Canadian Multiculturalism Act, Bill C-93, and the new Official Languages Act, Bill C-72. Both of these important legislative measures provide the necessary statutory power for the advancement of this bilingual and multicultural vision of nation-building.

Running counter to this vision, to this bilingual and multicultural vision, is the opposite conception of the country, which is advanced in the Meech Lake accord. Many learned critics, including the award-winning historian Ramsay Cook and John D. Whyte, dean of law at Queen's University, have demonstrated in their very lucid submissions to the special joint committee of the Senate and the House of Commons that the accord provides the constitutional and legal provisions for the emergence of two increasingly unilingual Canadas, one French-speaking in Quebec and the other English-speaking in the rest of the country.

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That Quebec clause, especially clause 2(1)(b) of the accord, recognizes Quebec as a distinct society. This is not just a symbolic preamble, as was originally proposed, in fact, by all three parties and the Quebec government. Something happened there at Meech Lake and Langevin. It was changed into a provision of substance. Rather, this article is a powerful constitutional interpretative clause that instructs the judges of the Supreme Court to interpret the entire charter, except sections 25 or 27, in the light of this sociological reality. Second, subsection 2(3) stipulates that "the Legislature and the government of Quebec" have the responsibility "to preserve and promote the distinct identity of Quebec...." Finally, the power of the Legislature and government of Quebec pertaining to the rights or privileges relating to language is reaffirmed by the "nonderogatory" clause, subsection 2(4).

If past history is any indication, and I think it most certainly is, Quebec's majority francophone society will certainly insist that the "distinct society" clause refers primarily to their culture and their language rather than to the bilingual and multicultural nature of Quebec society. If this accord is ratified by all parties, Québécois nationalists and the Quebec government will have at their disposal a constitutional mechanism, for the first time since Confederation, to enhance step by step the powers of the province of Quebec. They will achieve through the courts what the people and the politicians have refused to grant them since the early 1960s; that is, special status. They will be able to make the Quebec state coterminous with the francophone nationality of that province.

No Quebec government will be able to resist such political pressures. This virtually guarantees a collision with the Parliament of Canada, which under subsection 2(2) has merely the constitutional responsibility to preserve the bilingual nature of Canada, including Quebec. Given the political realities of our federal system and the limited and highly ambiguous wording of the Quebec clause, the responsibilities of the Legislature and government of Quebec will of necessity take precedence over those of the Parliament of Canada.

The same dynamic will occur in all the other provinces, which henceforth will only have to comply with the very limited constitutional obligation to preserve the linguistic rights of French-speaking Canadians. Some provinces, like Ontario and New Brunswick, have already adopted fairly enlightened legislative approaches towards their linguistic minorities. On the other hand, the remaining provinces have not. They quickly jumped at the opportunity, I feel, to limit their constitutional obligations by supporting the "preservation" clause of the Meech Lake accord.

Canada's linguistic minorities, represented by the provincial francophone associations--that is, the Fédération des francophones hors Québec--and by the Alliance Québec, have objected and continue to object vigorously to the severe constitutional limitation placed upon the Parliament of Canada and the provincial legislatures. The Mulroney government quietly acknowledges the political clout of these respective linguistic groups and their organizations. Rather than address their very real and pressing concerns with the accord by reopening discussions and entertaining substantive amendments, the Mulroney government has responded by speeding up the process of rewriting the 1969 Official Languages Act. Bill C-72 is now before the House and has passed second reading and is going into committee stage. Despite the support of the two opposition parties, I think a full-scale and potentially divisive debate on the language issue is virtually guaranteed.

Rather than campaign aggressively for immediate improvements in the Meech Lake accord, it appeared, until just recently, that the FFHQ was willing to accept the government's peace offering of a new and improved Official Languages Act. Indeed, since last summer, there has been a profound, bitter, divisive debate within the francophone associations of this country from coast to coast. They have met on numerous occasions to try to come to grips with the Meech Lake accord. The accord really has torn that organization, I think, inside out.

When the deal--that is, Bill C-72--appeared to be threatened by opposition in Tory caucus, FFHQ's president, Yvon Fontaine, stated publicly that if Bill C-72 was amended in any fundamental way, the association will advise Premier McKenna of New Brunswick not to ratify the accord. In a very real sense, the FFHQ had undermined its bargaining position by agreeing at the



outset with the Bourassa government's desire to pursue, thanks to the central provision in the accord, an increasingly unilingual Quebec society. It would have been far better for the FFHQ to have insisted from the outset, as it is now doing, that Premier Bourassa obtain from a majority of the premiers a commitment to preserving and promoting their respective linguistic minorities before giving its consent to the Meech Lake accord.

It now appears from the statement the Association canadienne-française de l'Ontario president, Jacques Marchand, made before this very committee that Premier Bourassa and Gil Rémillard had indeed promised to protect the rights of francophones outside Quebec. Unfortunately, in the heat of the prolonged, all-night discussions, perhaps when they were running out of doughnuts and coffee, the rights of Canada's linguistic minorities were deemed secondary to those of the majorities.

The FFHQ and its provincial associations, after realizing that their initial political strategy was not going to achieve the desired results for their constituents, have now decided to withdraw their support for the Meech Lake accord until the appropriate amendments are made. They want three basic amendments to the Quebec clause.

First, they want the recognition of the collective as well as the individual linguistic rights of francophones. They feel that the Quebec-Ottawa dualism expressed in the Quebec clause runs against the more traditional perception of the French-speaking Canadians versus English-speaking Canadians, the two cultural communities.

Second, the federal and provincial governments and the legislatures, they argue, must have the responsibility to promote as well as preserve the duality of Canada.

Finally, they contend that subsection 2(4) should be eliminated entirely. Clearly, the francophone associations have come to understand that an effective and politically viable policy of bilingualism cannot be advocated for their constituents while at the same time supporting the policies and the strategy of the Quebec government for a unilingual Quebec society.

Similarly, the Mulroney government and the Liberal and New Democratic Party opposition parties, to be logical and fair to all Canadians, cannot push an accord that will allow a policy of unilingualism in Quebec while pursuing a policy of bilingualism in the rest of the country.

How can the premiers square their achievement of the equality of the provinces with a Quebec clause that constitutionalizes special status for one province, Quebec, in our federal system? Moreover, one must ask whether it is in the interest of all Canadians that our legislatures define and entrench the preservation and promotion of majority rights in our Constitution while leaving the promotion of minority rights up to statutory legislation that can be readily altered with the election of new governments in the various provincial assemblies and in the Parliament of Canada.

Majorities can defend their rights at the legislative level. It is the minorities who require a constitutional defence against the tyranny of the majority. Their representatives are now unanimous on the need for amendments. It is only just and proper that the first ministers take their recommendations seriously and improve what has come to be seen and understood as a flawed constitutional document in its very essence; that is, the *raison d'être*, the Quebec clause.



No one really, I think, up until this point has made that point. I think now the linguistic minorities, the Alliance Québec and the FFHQ are making that point loud and clear.

I reiterate, rather than leading to a national reconciliation, as predicted by the Mulroney government, it is becoming increasingly clear that the stage is being set for a very bitter, prolonged and divisive battle over the linguistic and cultural multicultural policy. All of this is rather tragic and need not occur.

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Since last summer, there have been many excellent and practical recommendations advanced by a wide variety of groups and individuals before various national and provincial committees scrutinizing the accord. It is only proper and democratic that the 10 first ministers who signed the accord take the opportunity offered to them by the 11th first minister, Premier Frank McKenna, who did not sign the accord, to reopen negotiations. The opportunity is there. Justice must not only be done but also be seen to be done.

Canada's linguistic and ethnic minorities, its northern citizens, its native groups and its women must be assured that their rights receive the same constitutional protection as those of the majorities. Statutory protection of such rights is laudable but clearly insufficient. There must not be conflict between the national vision of Canada incorporated in our Constitution and the vision advanced in our statutory legislation.

A constitutional counter-revolution: In two very important ways, the Meech Lake accord is a constitutional counter-revolution that threatens to unravel the significant gains made in the Constitution Act of 1982. By constitutionalizing the Quebec Liberal government's ambitions to create a nationalist state--that is, a state committed to the defence and the promotion of the majority nationality--the accord threatens the very fabric of Canada's constitutional evolution since Confederation. In both its process and its content, the Meech Lake accord undermines the people's Constitution, represented in part by the Charter of Rights and Freedoms, by reinforcing the primary role of provincial governments in the process of constitutional reform at all stages.

Since 1982, the dynamic of constitutional reform has changed. The first ministers refuse to accept this reality. Consequently, the Meech Lake accord is not and will not become legitimate, I feel, in the eyes of a great many Canadians.

Constitution-making is a difficult and delicate process. It must not be hurried. It must not be dictated by mere political expediency. It must be the result of statesmanship. It must involve Canadians at all stages.

Before irreparable damage is done, the first ministers have the opportunity, as I have mentioned, to exercise statesmanship and nation-building of the highest order. They have the heavy responsibility of remedying the fundamental flaws in the Meech Lake accord.

This committee can help accomplish this worthwhile goal by recommending, with great determination and dignity, an appropriate set of amendments to the accord for the consideration of the Legislature of Ontario.

If our federal system is to survive as Canadians have come to know and

understand it, any and all constitutional reforms must contribute to maintaining an equilibrium between the national and provincial governments. The powerful centripetal forces at work within all provinces must be carefully counterbalanced by the centrifugal forces required in all modern nation-states. Only in this manner will Canada be able to serve its citizens' domestic needs as well as play a meaningful role in an increasingly troubled world.

The Meech Lake accord is a genuine test of the democratic nature of our society. Canadians must not fail that test. Committee members, all of you can help to ensure that we all pass the test with flying colours.

I wish to thank you for hearing me out.

Mr. Chairman: Thank you very much. I should note for the record that in your presentation, at times you were doing a summary. We certainly will have this with us as well to see and to go back to some of the points you have raised. Clearly, there is a lot of food for thought there, and we thank you for taking the time in preparing it.

Mr. Harris: I do not want to get into the specifics. I want to ask you a little bit about the process, because a number of people, as you mention in your brief, have commented on the process and I think I share some of those concerns.

I get the feeling from your presentation that the process that led to the Constitution Act, 1982, was somehow much better than this process. I do not recall its being significantly different. In fact, I do not remember too many hearings in 1982. I am not sure all the legislatures got a chance for hearings and a chance to vote on it. Other than the content, which you do not seem to like as well as that of the 1982 one, I wonder why you make the comment that this process is so flawed.

Dr. Behiels: If you go back to 1982, you will understand that we were trying in effect to get the process started. We had been unable, over a period of more than 50 years, since 1927, to get an agreement on an amendment formula. There had been some discussion since 1968 of entrenching a Charter of Rights and Freedoms, so that was a major turning point in our modern Constitution-building and nation-building.

I agree there were a lot of shortcomings in 1982 over the process, and people did make that point. Many groups in fact called for a constituent assembly in the steps leading up to the first ministers' conferences, but there was a lot more debate. Those discussions were open; they were in public. There was some sense of where we were going, of the issues being debated. When there were some shortcomings with regard to women's rights and native rights, there was a process whereby people met and organized and put pressure on the first ministers and on the three parties at the national level, and amendments were made at a number of steps in the process. It was not kind of written in stone, finished for good. The whole thing was referred to the courts. It was a very long, drawn-out, protracted procedure, which resulted in a better document in the end, I might add; not a perfect document, but a better document.

I think the same thing can happen this time. They should not simply leave out the input that can be provided to them via this kind of process. After all, that is why you people are there: to hear your constituents and to make the point that perhaps they did not get it all right the first time, that



they could really use the opportunity to go back and hammer out a document that will be there for a period of time, which constitutions really should be. We must not come back to this process on a regular basis, otherwise we will tear the country apart. Constitutions should be something that are debated long and hard. Then, once they go into effect, they are there for a period of a generation or two or three. You may tinker with them. You may make minor amendments, but on something like the Quebec laws, if we do not get it right the first time, we stand to reap no end of grievance and debate.

I agree that the 1982 process was not completely satisfactory, but I think it was merely the beginning of putting into place a very different kind of Constitution, as I have tried to explain, a Constitution that has really a people's dimension. I think they really overlooked, even at that time, the kind of amendment formula that is required to deal with that very different kind of Constitution.

Mr. Harris: You have suggested that the process be more open and that more time, I suppose, in between--

Dr. Behiels: Yes, leading up to the first ministers' meeting and even after. I think, first, there has to be a stage up to the meeting of the first ministers, and then between the time they come up with something which is in principle and the final draft, there should be other meetings at the legislative level, at the Senate and the House of Commons level, and then the first ministers come back again.

Mr. Harris: One of the things that is different is the charter. It is in now. It was not in; it was brought in during 1982 and gives rights to individuals. You still seem to be advocating that it is the first ministers who should be making the final decisions. Whether they are done over a period of time, behind closed doors or out in the public, it is still the first ministers who should be making these decisions. Have you given any thought to what part the individuals, whose rights are now protected in the Constitution, should be playing in this whole process? You say it has changed because individuals are there, but you are not recommending any changes that particularly give individuals any more say in constitutional change. You are still suggesting that these changes be done by 11 people.

Dr. Behiels: No, that is not true. What I am suggesting is that we set in motion, when we want to change the Constitution, a process of very general and protracted hearings, where legislatures invite groups and individuals over an extended period of time to discuss what it is the first ministers have in mind. After hearing people at some length in all 10 provinces and at the federal level, then, of course, the first ministers and the bureaucrats will draft something which they perhaps find acceptable. It will then go back again to committees of the legislatures, the House and the Senate for a second round, where again people can have an input. After all, that is our parliamentary system.

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Then, of course, if at that stage all the parties in the houses and the legislatures agree that we really do have a final draft which is next to near perfect--nothing is ever going to be perfect--then the first ministers can get together and ratify what has been done over a period of maybe two or three years, not what has happened this time where the cart comes before the horse and the door is closed and whatever. All of this ends up being very fine, but it is not going to lead, as I understand it from the statement of Premier



Peterson, to any change whatsoever to the accord on the part of the Ontario government, any requests to meet again.

Mr. Harris: He has changed his mind before.

Dr. Behiels: I hope so. That is why I did not give up, why I am not going to give up and why other people I talk to are not going to give up. We are going to keep hammering away until common sense prevails. We do not want to have a document that is not perceived as legitimate. That helps no one and in fact gets us involved in a second level of the problem: How do you unravel that mistake and proceed to redo it? If you compound the mistakes, one on top of the other, the process of unravelling them becomes extraordinarily complicated and becomes in itself a problem, politically and constitutionally.

Mr. Breaugh: I would like to touch on a couple of things around this process question. Most of us, I think, have observed that this is an intolerable process as it is now constituted, but in hindsight it is not as bad as I originally thought.

In the previous rounds, for example, there were no hearings of this kind at all that I can remember anywhere in the country. I guess what it is coming down to is, how many legislatures will accept the big bluff that is being undertaken here? When you get right down to it, if the legislatures do not ratify this agreement, there is no deal. That means that probably 1,000 or so members of parliament of different kinds across the country are going to have to agree that this package is workable, or it is no deal.

I have some hope that democracy could break out at any moment here and freedom could rear its ugly head. My concern is that I am given a package and I am told, by and large, that I have to work within that package. To many of us who have sat through a long set of hearings now, it is becoming apparent that there are some loose ends that have to be done up.

My personal concern is that if we are unable to address, for example, whether or not the charter is dramatically affected by this accord, if we cannot find the answer to that in a more definitive way than what we have seen so far, which in essence is a stream of very learned opinions from different folks--the score is about even on whether it does or not; that has to be nailed down--if we cannot deal with the Yukon's and the Northwest Territories' questions as to where they are at, and if we cannot deal with the matter of how we proceed from this point on, in other words, if we do not find a better process, I think we are up the creek as well. But all is not lost.

Can you conceive of a package of steps that might make this accord more palatable to you?

Dr. Behiels: Yes, if under the urging of Premier Frank McKenna the first ministers do take the opportunity to meet again. This time I would say it should be more than 24 hours or 48 hours. It should probably be a good week, after, of course, some preparation from the deputy ministers as to where the problems lie, with a very intensive seeking out of very important legal advice on those issues from a wide variety of sources after they have prepared everything very well. They should meet and they should not leave the table. They should remain at the table until they have worked out the Quebec clause and some of the other issues in terms, for example, of Senate and Supreme Court appointments, and even the question of immigration because people in the

west, like Izzy Asper, are very, very concerned about how that is going to lock in the country's development in demographic terms.

I have spoken to the Quebec clause issue because that is the one I feel is at the heart of the document. That is really what brought the premiers together. All the other issues were brought as extraneous matters to the table by the other premiers in return for their support of the Quebec package. Maybe some of those things have to be set aside momentarily and simply put off until another agenda rather than be constitutionalized in an accord.

Like you, I am not pessimistic. I think things can be put right, by and large. I think the whole question of the north and the question of a provision for the aboriginal groups can be looked after. I do not think the whole thing will unravel. I think that is a lot of scare tactics upon the part of Prime Minister Brian Mulroney.

People have not had sufficient time to understand what is happening and what we are trying to achieve. There is a very real feeling out there in the country that, yes, some accommodation can and should be made to ensure that the French-Canadian majority in Quebec can survive and develop and contribute, not only to a distinct Quebec, but in fact to a very distinct Canada vis-à-vis, for example, our cultural relationship with the United States.

I think the will is out there. Let us simply get these gentlemen together one more time and I think we can have a much better document through that process.

Mr. Breaugh: May I just touch on one other thing that Mike Harris mentioned. I am more concerned about the process question, frankly, than about almost anything else that is involved here. It may be true that in the first round of drafting the Constitution there was a great public debate, but I have to tell you it did not happen in Oshawa. At Mike's smoke shop they did not discuss the Constitution at all. It was not mentioned at the Queen's Hotel or in any rink I was in at all. I think what is true is that people who had a particular interest and were organized had that kind of accommodation of factors. They had the opportunity to participate, in kind of an ad hoc way, in what went into the first draft of the Canadian Constitution.

I am torn--I guess that is the best way to put it--by saying that is a right and natural way to move those who have a particular interest and are organized. Probably in any free democracy they will be at the bargaining table and at the public hearings. They they will be presenting their briefs and doing that.

My concern really is, what about everybody else? Where the hell do they fit in this? Where do they get their say? One could argue, I suppose, that at the next provincial election they will decide whether or not I am a good guy or a bad guy, but the truth is that this will not have anything to do with the Constitution, anything I said about the Constitution or any amendments that I moved. It will probably have to do with whether or not I got them a compensation pension or not.

There is a flaw in the process here that I am trying to get at. How do we rectify where we have been, which I think most of us would say is the wrong way to go about this. The whole process is backasswards. How do we get it turned around so that there is a duly recognized process that all Canadians



have a fair shot at, so that they have a role to play and it is clear what it is? Can you offer some advice in that regard?

Dr. Behiels: As I tried to point out, there is no doubt that there are really two constitutions within the Constitution. There is that traditional part of the Constitution which deals with powers between governments and there is now a constitutional dimension of the Charter of Rights and Freedoms that really deals with the relationship between individuals in the state, provincial and federal.

The amendment formula we now have requires seven provinces and 50 per cent of the population, or, in many items--far too many from my point of view because a unanimity rule can really hang us again for a long, long time--unanimity of all the provinces. Perhaps we need a third amendment procedure pertaining to the people's dimension of the Constitution, so that any time you introduce changes which will affect individual Canadians, perhaps that kind of amendment requires referendums.

That is just one thought off the top of my head, that we may have to become perhaps a bit more complicated here, God forbid; I am not sure how much more complicated. Perhaps, for that series of amendments pertaining to anything that might impinge in any way, shape or form on the people's dimension of the Constitution, we should really open it to all Canadians on an individual basis and have a national referendum for that kind of category of changes.

I am not sure. We really do have two different creatures here within the same Constitution. As you say, are we simply going to leave it up to the first ministers to resolve in the end, amendments to the two different categories, or are we going to be more sophisticated and introduce a third amendment procedure?

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Mr. Breaugh: I have one final question. It has been dignified by the term 'executive federalism,' which I did not know existed in this nation until these hearings began. To put it bluntly, 11 guys went off to the lake for the weekend and drafted a new Constitution. I do not remember the source of their authority to do so. Some experts have appeared in parliaments and said we have always done it this way, that a small, select group of very wise people draft things like Constitutions and the rest of us just put up with it.

It concerns me somewhat. I am not at all sure this is legal. I admit they are all properly elected as the premiers and the Prime Minister of the country, but I do not know where they draw their source of power from for putting in place constitutional changes of this scope.

If the big bluff works and this routine floats through all the legislative assemblies in the country with nary a ripple, no one will be able to complain, but it seems to me they admit they did not have the authority to do that. Otherwise, why are we here and why will there be a vote in each of the assemblies across the country? Have you noted, in your opinion, how legit this process is?

Dr. Behiels: Executive federalism is not something which is new. After the Second World War, particularly by the 1960s, the first ministers met on a recurring basis, discussing a wide range of items from the economy to other aspects of Canadian society such as social welfare programs and



pensions. The list became longer and longer as society became more complicated. As governments did more and more, there were conflicting jurisdictions. They had to sort out those programs.

When you enter into the process of constitution-making, it is a very different ball game. It is a different subject matter entirely. I think you are right in a sense, that perhaps not legally but in conventional terms Canadians should stand back and say, "Executive federalism is fine for some things, certain categories of problems that have to be resolved between provinces and Ottawa."

But when it comes to making the first law of the land, the rule book, so to speak, that will guide our lives and the lives of our children for generations, perhaps we should say, "It is not something where you simply allow 11 men to go off for a weekend and say: 'Here it is, boys and girls. This is yours and you really cannot change an i or cross a t or whatever on it. That is it. It is a fait accompli. You can talk about it all you want. You can grumble about it and groan about it, but that is it. You have got it and unless you can kick us all out and replace us and do the same thing we did, you really do not have any alternative.'"

When it comes to constitution-making, I think you are right. We are in a jam here. We have to go back and consider very seriously how we go about this. I do not think we can afford to do it every year because, if we do, people like myself are going to be awfully tired and people like yourselves are going to waste a lot of time and energy when that time and energy should be better spent doing other things.

Miss Roberts: I will be very brief. Thank you for your presentation, doctor. I, too, am interested in the process. From what you are saying, I would suggest you do not think the Meech Lake accord can be made legitimate.

Dr. Behiels: No, I did not say that at all. I said, "Get back to the table after having an enormous amount of input." I have followed the whole procedure from day one. I have read most of the briefs to the joint committee. I have read most of the briefs to the Senate. I am trying to keep up with what is happening in front of this committee. I have tried to follow what is going on in other parts of the country. I think there has been enough debate and by the time more hearings are held in New Brunswick and perhaps in Manitoba, I think the first ministers will have ample evidence as to what they should be doing and the kinds of changes that this document at this point in time should undergo.

As to what we do in the future, I think they should also put, as a first item of any future constitutional conferences, how we prevent this kind of disaster from happening again.

Miss Roberts: But the changes you are suggesting are so fundamental and are dealing with so many other things that have been dealt with in the Meech Lake accord, that when you were finished that process, it certainly would not be a Meech Lake accord. You are not just going to rearrange some of the words. You are suggesting a very fundamental change, more things being introduced and a much more extensive or a much less extensive change in the Constitution or in the 1982 act.

Dr. Behiels: The heart of the Meech Lake accord is the Quebec clause. That is why they got together. I think it is now understood by a lot of people that in order to make that clause acceptable and in order to make it

work for all parts of the country, for the linguistic minorities as well as for, of course, the French Canadian majority in Quebec, there has to be some rewriting of that clause. If you begin with that and you get that right, then the other matters can be sorted out. Western Canada will want to have some sort of redrafting of the clause on the Supreme Court, rather than having this kind of interim measure. They will say: "Let us start right now. Let us not put it off indefinitely and perhaps never get any kind of genuine reform of the Senate."

There is no doubt that what I am talking about are some fundamental changes to the accord, but I feel the accord is so flawed that to allow it to go through is going to create, for a long time, a protracted constitutional debate which no country can endure indefinitely. Before we really do that I think we want to say, "Let us get back to the table." If they cannot resolve it in one meeting, fine, have another meeting, but get it right or as right as you can get it under the circumstances. This is not ordinary statutory legislation. This is putting into place the Constitution of the country and because of that you have to take a far greater amount of time, energy and caution.

Miss Roberts: No further questions.

Mr. Allen: It is pleasure to have Professor Behiels with us to give his analysis of the Meech Lake accord. Like him, I certainly have some questions about process and I have some questions about aspects of the accord. He has fielded many of those issues as a kind of trailer to the main concerns which are the "distinct society" sections, the dualism section and the first part that addresses the issue of Quebec. It is principally around the problem whether this does not field a totally different vision of Canada than he is sympathetic with and that many others have fought hard to accomplish.

What I want to ask him, though, is whether it really is as apocalyptic as it all sounds and whether it is not possible to read that language in other ways. One says, "Mr. Bourassa will do this," and, "The Quebec government may do that," without at the same time putting alongside that the fact that there will be the Supreme Court; there will be references to the court and court challenges all the way up and down the line.

There is the possibility of issuing challenges on the basis of what it means to preserve the linguistic duality of Ontario, for example. Does that in fact mean, as l'Association canadienne-française de l'Ontario said to us, that there will therefore simply be the preservation of museum pieces in Ontario, or does "preserve" really mean that preserving is a positive form of action. When the courts come to decide what is meant by the promotion of the "distinct society" in Quebec, it will not necessarily, finally, be Mr. Bourassa's view on that, or even Mr. Parizeau's view, that will determine the court decisions. If the courts decide that the promotion includes also the promotion of the dualism of Quebec society, if it presumes that the promotion also is the promotion of a province that already has the strongest human rights legislation in the country, if it presumes the promotion of multilingualism such as it exists in the context of a predominantly French society or French language culture, then is one not moving in quite a different direction than you are suggesting, namely, in the direction of the two nations theory, the two unilingual blocks? Is one not really still talking in terms of a bilingual concept of the nation, both bicultural in a big sense and multicultural at another level? Is it not possible to read this thing in a rather different fashion than you are presenting in, I think, perhaps, too strict a fashion?



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Dr. Behiels: Yes, Mr. Allen, I think it can be read in other ways. There is no doubt that those people in Quebec in the situation of being either linguistic minorities or ethnic minorities are going to make a very strong attempt to try to read and have the court read that clause in such a way that it does not jeopardize unduly their situation. But the courts, you have to understand, operate in a political context, in the context of a political culture, in the context of a political debate. There is no doubt in my mind that the present Quebec government of Robert Bourassa and Gil Rémillard and others will push very hard to have the courts interpret this document in such a way as to give the Quebec government enhanced powers to preserve and promote the development of the French-speaking majority of that province. That is very clear. If you read what they had to say before the Quebec commission on the Meech Lake accord, if you hear what they had to say to the national assembly, if you read what they have been saying and what has been written about their statements in the press, that is really, as they see it, their mandate. They will set their lawyers, and a great many of them, to the task of ensuring that the Supreme Court interprets this document in just that way.

There is no doubt that there is going to be a great many other groups in Quebec and in other parts of Canada who will also go before the Supreme Court and this will drag on indefinitely, case after case. Of course, he is waiting now for the shoe to drop on the question of bilingual signs and Bill 101. If the courts rule against the Quebec government on that question, the scenario, as I see it, is either to invoke the "notwithstanding" clause or, in fact, when the Meech Lake accord is ratified, to introduce amendments to Bill 101 and then push them right through the court system or wait until they are challenged by others and see them right on through to the Supreme Court, where they can make the argument this time around on the basis of the Meech Lake accord, hoping then, of course, that their Bill 101, as they design it, will stand.

This will lead, I think, to long and protracted constitutional debates within the judicial system. I am not sure, again, if a country can endure that kind of constitutional guerrilla-style warfare between the provinces and Ottawa. I do not think that is healthy.

Mr. Allen: Can I simply ask you, then, if one puts it in that political context, is that debate not going to go on anyway? You just said if Bill 101 is in certain portions struck down by the Supreme Court, if the "distinct society" language is not there, the Meech Lake accord is not at hand to refer to, none the less, the minimum ground, in the most moderate party in Quebec at this time, is such that without contemplating even a move towards a future Parti québécois government, that the debate is there, the political pressures are there, the demands are going to be there?

That brings me back to my question. Is there anything then really that is essentially apocalyptic or that fundamentally changes that situation in the Meech Lake accord?

Dr. Behiels: The point I am trying to make is that we have had this debate now; I have taught it for almost 16 years, and I have studied it for 20 years. I think it is about time we bring the debate to an end rather than simply feed it. I think the only way to bring the debate to an end is to have very specific, nonambiguous, clear and precise clauses in the Constitution that will help Quebec do what it wants to do; that is, preserve and promote the development of the French-Canadian society in that province and in other



parts of the country equally well.

In effect, we want to avoid prolonged debate by making sure that everyone is not going to challenge it indefinitely in the courts. We do not want that. We want a Constitution that is clear, that people understand and that addresses and resolves specific problems, not one that can be used by any incoming Quebec government--and it could be a Parti québécois government once again--to exercise through the Constitution this time, not through the ballot box or through the democratic process but through the courts, a kind of leverage on the rest of society which will create political and social instability. We need something more precise so that it is not challenged at every turn of the way by some group in society.

Mr. Chairman: Thank you very much, Professor Behiels. Our next witness is going to have to catch a plane a little before four o'clock, so I have asked Mr. Offer if he would stand down at this point. We thank you very much for preparing your paper and for coming here this afternoon and sharing your thoughts with us. We thank you once again.

Dr. Behiels: Thank you very much.

Mr. Chairman: I now call upon Professor Bradford Morse of the faculty of law at the University of Ottawa. Please come forward. I appreciate that you have some airplane problems, so without further ado, welcome and please go ahead and make your presentation; we will follow up with questions.

Mr. Morse: Fortunately, my flight is not at four, but I will have to leave before then in order to get it. It is one of the joys of Air Ontario being out on strike; there are very few flights into Sarnia these days.

Let me begin by thanking the chairman and the other members of the committee for the opportunity to appear before you today and express my personal views on the so-called Meech Lake accord. I think you have in front of you a copy of my presentation; so I will just kind of dive right through it. Please excuse a few typos, but my typing skills are perhaps not what I would like them to be.

I have been a participant in what I think could be called the constitution building experience in this country over the years since before the Constitution Act 1982 in a particular capacity, namely, as a legal adviser to different Indian and Metis groups and particularly with the Native Council of Canada in the last few years.

I mention that for a couple of reasons: first, to give you some idea that my background has involved a fair degree of exposure to these issues both from the outside looking in and on the inside, in the conference halls, in the back rooms and so forth, seeing the good aspects of constitution building and some of the perhaps less savoury ones; second, to indicate perhaps that my views therefore come from a particular perspective; and finally, because I do want to make it very clear that I am appearing before you today in my personal capacity, presenting those views and not those of any aboriginal group with which I have been associated.

I particularly stress that last point because the Native Council of Canada is going to be appearing before you tomorrow. I have had the honour of appearing with them before the joint committee of the Senate and House of Commons and, more recently, the Senate committee of the whole last December. They will be presenting the official position of the Native Council of Canada

in reference to their constituents, literally tens of thousands of Indian and Metis people off reserves, which includes the constituents in Ontario of off-reserve aboriginal peoples.

Let me also indicate that I have referred to the so-called Meech Lake accord deliberately. The reason for that is not merely a legalistic one but rather to try to emphasize what I think is a rather important distinction; that is, the distinction between the accord that was reached last April at Meech Lake, which was not quite Bob and Doug and the boys going off with a couple of cases of Molson's, the image of which was raised by one of the earlier questions.

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Nevertheless, at the meeting of the first ministers that did take place at Meech Lake on April 30, an accord was reached, an accord which I think was applauded by many Canadians at that time, and I understand with good reasons. In the amendment proposals that were reached in the early morning hours in the Langevin building in Ottawa in June, we have replaced perhaps what was once called the cannelloni accord in late 1981 now with the early morning Langevin accord. Prepared in haste by a tired group of men and, I should add, one woman, it has somehow become rather sacred and untouchable.

I would like to focus in on the language of the actual draft.

Mr. Chairman: I have one question. You have introduced a completely new concept. You say there was one woman?

Mr. Morse: Yes. There were 11 first ministers, but there were two other people in the room.

Mr. Chairman: I see.

Mr. Morse: The official authorship, perhaps, might be dubiously directed to the male side of the species, but there were two senior officials, one federal and one Albertan, who were present in the room as well, and therefore, women were--if one could use it in those terms--present if not represented around that table. That might be the most apt way of putting it.

This accord, or the actual amendment language as well, has been described by many first ministers as essential because it is stated to be needed to satisfy the Quebec government's demands in order for it to accept the 1982 Constitution. However, it does contain constitutional amendments that were not sought by Quebec.

It has been called untouchable because of some fear that it is almost as if it is a magical beast that will unravel or evaporate if even one minor change is made. I confess, perhaps somewhat following along the lines of the previous speaker, I have a great deal of concern as well in envisioning those amendments to our Constitution--which is, after all, the supreme law of the land, has always been seen as such and clearly declared to be such in the Constitution Act of 1982--could rest on such a shaky foundation as to be subject to unravelling with even the most minor of amendments. In fact, I think our own experience in developing the Charter of Rights and Freedoms in late 1980 through 1981 demonstrates that compromises and negotiations are possible when a positive spirit is present.

My fear really is that the first ministers have labelled it as



untouchable because they cannot themselves justify certain parts of it. They do not wish to explain each important component of the amendment package, as some aspects of this politically inspired deal, I think, cannot be satisfactorily substantiated. I just do not think they can be justified to the Canadian public.

It is far easier, therefore, to present it as a package, as an entire whole, and then describe it as something which Quebec demanded, thereby suggesting that it cannot be touched, it is unnecessary to pull it apart and look at it piece by piece, because if we pull one string, the entire fabric will become unwoven.

The specific issues I would like to address are as follows: the "distinct society" clause; what might be characterized as some of the northern provisions or those provisions that affect people in the north; and the question of future reform, particularly one clause that I fear may not have received quite as much attention before the committee, and that is the nonderogation clause.

Let me begin by addressing the aspects of the Langevin draft which I think disclose an obvious southern bias and prejudice, the clauses that would not have been negotiated if the territorial governments were present and clearly were not the kinds of proposals that were coming forth during the first ministers' conference process that culminated under Part IV on March 27, 1987.

These are the provisions that I think violate standards of fairness that Canadians have had for a long time. Our history, of course, is one that has always demonstrated a southern and eastern bias; in fact, a bias in favour of white European settlers. Colonial boundaries since before 1867 were pushed northward in this province, in Quebec and in British Columbia so as to absorb lands in which the majority population was Indian and Metis. Since Confederation, we have continued this process, which, from an aboriginal standpoint, is seen very much as a land grab; grabbing territory in the sense of trying to get the natural resources attached to it and also in the sense of trying to impose provincial control over those regions.

In no case of which I am aware were the local residents ever consulted, were there ever legislative committees of this nature that travelled into their territories, let alone were they ever given a decision-making voice. Instead, these were decisions taken by southern, urban-driven governments, whether in the colonial context or in the post-Confederation context of governments based in Quebec City, Toronto, Winnipeg and Victoria.

Likewise, even when we created the provinces of Alberta and Saskatchewan, we never went to the population north of Edmonton and Prince Albert and asked them if they would like to be included in these provinces, if they wished to have those provincial boundaries drawn up to the 60th parallel.

The final example, of course, would be the residents of Labrador, again, predominantly aboriginal.

If we had actually drawn our boundary map somewhat differently, we would see a string of 10 much smaller provinces to the south, which would still consist of the vast majority of Canadians. We might then see a number of other provinces such as northern Ontario as a province of its own, which still would be below the 60th parallel, but in which the population makeup would be quite distinctly different from the population makeup of the province of Ontario as



it stands today.

The proposed amendments will entrench what has already been somewhat an undemocratic experience of northerners since 1982 and will entrench that even more so in the future.

There are two elements to this issue. I know you have already received complaints from governments and northerners about the institution of further obstacles. I suggest this is not just an issue of concern to northerners. We might say this is an Ontario select committee; that is a problem for people in the north or perhaps a problem for the federal government, such as the Senate task force report that has now come out specifically on the north. But I think this in fact speaks to a concern of Canadians generally, that is, a perception of fairness about changes to the Constitution, changes that will affect us all.

I confess I have some difficulty in seeing what could possibly be the basis for demanding unanimous support from all 10 provinces for any proposal that is ever endorsed by the government of Canada in the future. It would create one, two or perhaps three or more provinces out of the territories that are currently territories, currently subject to exclusive federal jurisdiction.

Why should we, in 1988, while making amendments to our Constitution, especially when we are championing the rights and freedoms of all Canadians through a charter enacted a mere six years ago, be declaring residents in the north second-class citizens, particularly when we have no history in Canada of doing this? We did not do it with Manitobans in 1870, we did not do it with people in Saskatchewan and Alberta in 1905, yet all those are examples of provinces that were carved out of what we still call the Northwest Territories.

How do we explain this today? How can we justify that, not only to northerners but to other Canadians? I fear it suggests, perhaps, that the premiers wish to keep the first ministers' club closed only to the current members. This is a new club in constitutional terms. It did not exist prior to 1982 in any official terms. It was created in fact by virtue of Part IV of the Constitution, namely, the aboriginal constitutional development clause. That is the first reference in our constitutional history to first ministers as such, in fact, to the Prime Minister or premiers.

Now that it has official existence--that existence expired on April 17, 1987, and it seems, within a mere two weeks, the first ministers wanted to preserve their existence as such and we now have proposals that will entrench their existence forevermore.

The draft amendments also allow the existing provinces to resume this earlier approach of expanding their boundaries, even at the expense of the wishes of the residents of the territories. Why do we add such a clause today? Is there a province today that is anxiously coveting part of the Northwest Territories or the Yukon that really wants such an amendment as this to be included? Is there some desire of such? Clearly, no first minister has come forward to say so.

1520

Nevertheless, these two provisions are present among the amendments. Even if no first minister has publicly justified them, nor has any first minister really publicly claimed authorship of them, they are present. They are not present at the request of the province of Quebec, but they are present. If no one will stand up to support these two provisions, then they

should clearly be removed.

The territories, of course, suffer in other ways. There is at least one I can relate to very directly as a lawyer. However, let me suggest this is not exclusively a lawyer's concern. Under the constitutional language as it is drafted at present, lawyers from the Northwest Territories and the Yukon bars are eligible for appointment to the Supreme Court of Canada. There has been some misunderstanding by some witnesses or some reporters to suggest that lawyers from the north are ineligible for appointment to the Supreme Court. They are eligible.

The difficulty, however, is that the nominees come from lists of the premiers. I find some difficulty imagining that Premier Peterson would choose to say: "There is no lawyer competent in the province of Ontario. I am instead going to nominate a lawyer from the Northwest Territories or the Yukon for consideration." Practical politics and provincial pride being what they are, it seems a little bit difficult to imagine that. As such, therefore, lawyers, although eligible, would never appear on the lists of nominees for appointment to the Supreme Court.

Again, this has been suggested by many to be an oversight. In part, it has been rationalized by some, such as Professor Hogg, by saying, "Look, we have never had a member on the Supreme Court from the territories in the past." If it is an oversight, then let us correct it, as has been proposed by the special joint committee and most recently by the Senate task force.

If we choose to rely on past practice and that is our criterion, then in 1981 we would have said that future appointees to the Supreme Court of Canada should only be men because there have never been any women on the Supreme Court. If that had been the case, we would no longer be able to benefit from the presence of Madam Justice Wilson, a judge from the Supreme Court of Ontario and Court of Appeal before being elevated to the Supreme Court of Canada in 1982.

Territorial governments are also precluded from creating lists of Senate candidates to fill vacancies in their respective seats. In other words, what we have done is to modify the status quo regarding Senate appointments modestly to say, "There are 104 senators and 102 of them will be drawn from lists generated by the provinces, therefore ensuring perhaps some level of provincial representation outside the exclusive control of the federal government"--or as some cynics would suggest, just simply sharing the power and patronage that had been the fiefdom of the Prime Minister with 10 other first ministers--"but we will not do that for the other two seats."

This again is not an earth-shaking provision. It is not likely to cause people to demonstrate in the streets or riot in front of the Senate, or wake up the Senate as some might suggest, by such protests, but I think it does have a symbolic effect. The message it gives to northerners simply is that they do not count. Where we wish to stress Arctic sovereignty, then we will point to northerners. When we are concerned about resource development in the north, we of course then pay attention to it. But otherwise, it sends an image that northerners just are not welcome to participate on the same terms as other Canadian citizens.

The governments are duly elected by northerners. Granted they are not provinces, but they still will not be able to participate in the same way. We are not talking about provincial power here really. We are talking about inviting premiers to be involved in the selection process of appointments to the Senate.



I confess that last summer, when I saw these clauses, I was feeling perhaps in a charitable mood or just regarded these as functions of sloppy drafting, of tiredness, of people being locked in a room and denied bread and water until they agreed to sign, but I confess I am less charitable today. If this was a function of poor drafting, and I think in many ways it probably was, we might expect the first ministers to appreciate the outpouring of complaints and say: "We never intended that. We are prepared to rectify it."

That has not been the case. The first ministers have met. It is not as if they have not spoken to each other by phone. For that matter, they have met since Meech Lake, since Langevin. We have had a first ministers' conference on the economy. The suggestions have been discussed in the hallways but, nevertheless, the official position from the Prime Minister and a number of premiers is that they refuse to reopen it. That, from a northern standpoint, suggests either that these flaws were premeditated and are not flaws but were intentionally instituted, or it, again, reflects a rather complete disregard for the people of the north.

Of course, the people who were slighted most by this process are the first peoples, the original or aboriginal peoples with whom I have had the good pleasure of working over the years. Needless to say, they are the ones who have really set Canada apart. They are the people on whom we rely for our foreign demonstrations of our uniqueness. We acknowledge their presence whenever visiting dignitaries are given gifts of Canada; they are so frequently given gifts that are, in fact, really gifts of aboriginal art.

They are the people who have devoted years of energy in this constitutional process. They are the ones who in fact had extensive negotiations before the joint committee in 1981, who participated in a fairly broadly based, careful, long-term drafting of the new Constitution. They are the ones who also had the experience of having a victory snatched from their hands by, again, 11 first ministers meeting in this city. That is why many aboriginal people are starting to become angrier and angrier whenever they think of Ottawa.

It has not been a happy place in constitutional terms for them, because these 11 men, sitting around a table in this city, deleted the first provisions that would reflect aboriginal peoples and their rights. In fact, we must remember that is why Quebec felt left out of the Constitution Act, 1982. It was a deal struck late at night that brought six of Quebec's then allies across to the other side, and the price of admission for that was to drop the provisions regarding aboriginal peoples and equality rights. We know those provisions made it back in, but they did not make it back in on the same terms as they were originally present.

However, aboriginal people continued to believe in the Constitution-building process. A first ministers' conference process was established--as I have alluded to, this is the first such constitutionally mandated first ministers' conference process in our history--and created the process in constitutional terms. It had existed in the past by political agreement but never by constitutional requirement. That process began, as you know, in 1983, led to some minimal success at that time, led to the first amendments which went through the provincial legislatures, all with the exception of Quebec, interestingly enough without hearings of this scale, because they were seen as so uncontroversial.

They continued that process for three more attempts, unfortunately without significant success. Despite dozens of officials' meetings,



ministerial meetings and then four first ministers' conferences, in the final analysis, the first ministers were unwilling to agree with the proposals of the four national aboriginal associations.

What has infuriated aboriginal people somewhat further is that, of course, within a mere 33 days of the last first ministers' conference they were at, the Meech Lake accord had been struck. In fact, they discovered that while they thought they were the only agenda item in first ministers' conferencing, the Quebec demands were very much on the agenda, and separate, secret meetings were taking place at the officials' level without aboriginal involvement.

The effect of this is to leave aboriginal people feeling somewhat betrayed. They were told many times at their conference table that their demands could not be acceded to because they were not understood. I find it hard to believe that the first ministers, when they walked out of the Langevin building early that morning, could have stood before a committee such as this and articulated in detail what the meanings were of the different clauses in the so-called Meech Lake accord. Nevertheless, they were prepared, of course, to sign that deal without years of work, without careful, close scrutiny. Not so for aboriginal proposals.

Obviously, that suggests some differences, differences that emanate from the different status of Quebec, but also emanate as well from the fact that what we have here to a degree is a bit of a power grab, the results of a power grab. As I mentioned earlier, there are provisions here that were not sought by Quebec. Thus this proposal is not solely an attempt to meet Quebec's concerns. It is, again, meeting the price of some other premiers for their endorsement; the kind of thing that was done back in November, 1981.

1530

I think what you have already heard from some aboriginal groups and will continue to hear from others are their concerns both at a legal level and a symbolic level. The "distinct society" clause does raise concerns. It raises concerns specifically, I think, for aboriginal people because of its implicit message rather than its explicit one.

The "distinct society" clause does not explicitly say that Quebec is the only distinct society, but by virtue of being the only one that is defined as such, it implicitly suggests that no other group or society in Canada is distinct. Some of that lovely little legal advice you have received suggests that the Latin phrase "expressio unius est exclusio alterius" means that as soon as you express one thing, you, in effect, exclude others. That, then, perpetuates what from an aboriginal perspective is a two-founding-peoples fallacy and not exclusively from the aboriginal peoples' perspective, either. The concern then is not so much that section 2 may have great legal effect; after all, it is a rule of interpretation. But then again I must hasten to add, as a lawyer, one can never predict how any statutory provision will be interpreted, let alone a constitutional provision. We will only know once the Supreme Court of Canada tells us, and even then it will be telling us its view of that constitutional provision at that time. It is subject to alternative interpretation by the Supreme Court yet again at a later date or a later generation.

My suggestion is that the effect here is very clearly, at least on an immediate level, immediate terms, on a symbolic level. It is giving a message across to aboriginal people that they are not a distinct society. It is

suggesting as well to other cultural groups in this country that somehow they are not founding, they are not distinct. The presence of the clause defining Quebec as a distinct society does not really provide concrete expression to Quebec's concerns about preserving its integrity and uniqueness. Those become more immediately realizable through other provisions in the accord, through constitutionalizing what has been a convention of having three appointees on the Supreme Court of Canada, but now giving the province of Quebec control over those appointees; the change in the immigration provisions, the change in the financial compensation provisions and the shared-cost provisions. But for all other Canadians, seeing Quebec as a distinct society, seeing English and French speakers as "a fundamental characteristic of Canada" gives a bit of a slap in the face to them.

The accord also suggests in section 16 that there is a protection here, nothing to worry about. The protection to the "distinct society" clause will not be interpreted in a way that would run afoul of multicultural heritage or that would run afoul of the rights of aboriginal peoples. This is, unfortunately, not a clause that was carefully or well drafted. It is inadequate at eliminating what I think is a sense of outrage for many who feel explicitly omitted by the "distinct society" clause, but I think it also fails to accomplish in law what it set out to do.

By specifically attempting to exclude the "aboriginal peoples" clauses and the "multicultural heritage" clauses, it raises the possible interpretation that all other provisions within the Charter of Rights and Freedoms are subject to the scope of section 2. So, again, by specifically excepting something, you raise the inference that everything else is covered or is subject to section 2.

Furthermore, by exempting the multicultural and aboriginal peoples clauses only from section 2 within this package, you raise an inference that those clauses have expressly somehow been changed by all of the other provisions in the Meech Lake accord, such as, for example, the national cost-shared program.

I think at this stage it is rather distressing for aboriginal people and for many other Canadians, such as myself, to see where we are ending up. Some would suggest that section 50 preserves the possibility for what is now really a third round, rather than a second round, of constitutional change, but here too I think we have a mistake.

Section 50 guarantees that we will have constitutional conferences each and every year, even if it may be ludicrous to think of having such conferences in each and every year for evermore, on into the 25th century. Presumably, if the first ministers ultimately become overwhelmed by this experience, they may seek to amend and delete it. But until that time they will meet each and every year. In fact, by accord, they have agreed to meet by the end of this year. Whether the Meech Lake amendments are in place or not, we have a political agreement to have a constitutional conference by December 31, 1988.

In the future they will be meeting again each and every year. The Senate reform and control over fisheries are on the agenda, year after year after year, and what is suggested is "such other matters as are agreed upon." This is one of these lovely phrases that leaves open to great legal debate, one legal opinion versus another, what it really means.

One scenario that I fear may well be correct is that a court will



conclude that "agreed upon" means agreed upon by the first ministers. Namely, the 11 first ministers decide what will be other agenda items. If that is correct, as I fear it is, then the promises of first ministers to aboriginal peoples and to others that their agenda items will come back before the first ministers for future discussion is a false one. The only way that can occur then would be through unanimous consent of all first ministers. Several have indicated very clearly that they have no desire to see that occur, now or in the future.

If that is the case, then what Ontario will be saying, in effect, when it passes this amendment, if it does, is that it is intentionally closing the door on future reform of the Constitution as far as aboriginal peoples are concerned.

There are clearly other provisions in the accord that have caused a concern for many Canadians, particularly those concerned about erosion of federal authority, but I think perhaps I have gone on long enough at this stage.

Let me just suggest to you that you have two options at this stage. You clearly can seek amendments in the proposal as present. There is an alternative option, which is far too little understood, and that is that you can ratify the package as it stands now but introduce simultaneously a separate resolution which seeks to make the amendments.

If first ministers say, "We can't touch the agreement that was signed because of fear that any amendment will cause it to disintegrate," surely that explanation would not stand up to close scrutiny so as to prevent the Legislature of Ontario from initiating subsequent constitutional change through a companion or separate resolution.

Thank you for your attention.

Mr. Chairman: Thank you very much, Professor Morse. You have touched on a number of aspects. I wonder if I could just ask you, first, to expand a bit upon your last point. I think you are the third or fourth person who has raised the question of a separate resolution, and this has also come up, I believe, shortly after his election, when Premier McKenna, in an interview in *Le Devoir*, talked about that aspect. It was the association of Metis, I believe, that raised it specifically before us several weeks ago. I know it has come up another time.

Could you just set out in your mind how that would work and perhaps put some flesh on the bones there, because it is one that is interesting?

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Mr. Morse: Surely. This is actually an idea you will hear more about tomorrow from the Native Council of Canada. It is one that the Native Council of Canada dreamed up last summer in trying to assess what are the appropriate responses to the Meech Lake accord, given its dissatisfaction with it.

It really simply suggests that, by virtue of the constitutional amendments that were made in 1982, we do now have something of a new ball game. Prior to that time, constitutional change occurred through a variety of different means, but it always occurred by the informal arrangements of first ministers. There were no clear, concrete rules. The Supreme Court of Canada, as you know, in the reference case in 1981, suggested that perhaps there was a



convention that had coalesced. It was not entirely clear on what it might be.

The amendments in 1982 give us a precise amendment formula or, in fact, several such formulae. What they suggest is that amendments can occur. The precise procedure is for the Great Seal to be given once a resolution has passed the Senate, the House of Commons and the appropriate number of legislatures.

They do not say how one gets to that point. They simply say that once one is there the Governor General can issue the Great Seal. The interpretation that I have put upon this clause--and I have discussed this with many other constitutional experts and they agree--is that this process can be initiated in one of several ways. We have seen one such way to date, the first ministers' conference process--the first ministers agreeing, drafting a text, signing it and then promising, in a companion accord, that they will take this forth and go where with it? To their legislatures and to the Parliament of Canada where they will introduce it as a resolution?

The second way in which this can proceed is for any one of those legislative bodies, such as the Legislature of Ontario, to initiate a resolution at any time. If that resolution passes the province of Ontario and then passes the requisite number of other provincial legislatures, the Senate and the House of Commons, then a Great Seal would be issued, i.e., an amendment would occur without a first ministers' conference ever being held.

In fact, when it comes to amendments that would affect aboriginal peoples, there is a special little wrinkle, and that is by virtue of one of the amendments that was agreed to in 1983 and implemented in 1984. That is section 35.1. What it suggests is that whenever there is a constitutional amendment that is being discussed that would affect the clauses in the Constitution regarding aboriginal peoples, then there must be a first ministers' conference to which they are invited. That, too, suggests that there is a mechanism other than the first ministers' conference process. My understanding is that the official legal view of the government of Canada is that this is available, or their view is that this opinion is the correct one.

What I am suggesting is that the Legislature of Ontario could tomorrow, if it wished, introduce a resolution on any constitutional provision. It then becomes really the political question of, "Will there be enough support among the requisite number of other legislatures in the country for that amendment actually to come into existence?" But that is clearly a possibility.

Mr. Chairman: Thank you very much. I have Mr. Villeneuve.

Mr. Villeneuve: I have a quick supplementary on that companion.

Mr. Chairman: OK, a quick supplementary, then Mr. Villeneuve, Mr. Breagh and the chair.

Mr. Villeneuve: On the companion resolution, is there any breach between the matter at hand and the companion resolution? In other words, the matter at hand does not proceed, pending disposition of the companion resolution?

Mr. Morse: Yes, if you were to initiate a resolution, let us say, of companion amendments, obviously you would have to draft them in such a way as to be independent of the Meech Lake accord or to be supplementary. They could not be drafted, for example, to repeal subsection X of the Meech Lake accord,

to pass today when you have yet to pass your resolution on the accord itself.

However, you can initiate resolutions that address the specific concerns perhaps without referring to the language of the other accord. So you have the effect of accomplishing that objective. If you wish to amend specific wording in the Meech Lake accord, I think you have to do that as a resolution which is passed subsequent to the Meech Lake accord, but it can be immediately, five minutes afterwards or five months afterwards. It is really a drafting question.

Mr. Villeneuve: Professor Morse, you make a very interesting presentation. Under the "distinct society" clause--and I am not learned in the law--I would like you to let your mind ramble a bit and present us, knowing how legal people operate and maybe how some of your peers in politics operate, with what might be a case scenario? With a distinct society in Quebec, where does this end, in your opinion? Does it go from simply linguistic and cultural, or just how broad is that?

Mr. Morse: One of the challenges when one is dealing with new constitutional language is that no one is learned in the law, so one has lots of company. What that refers to simply is that the language used here is undefined; it is vague. I clearly would not attempt to tell you that this is the only meaning the "distinct society" clause could have. What the first ministers had in mind when they met at Meech Lake or what they had in mind when they met in the Langevin building is ultimately rather irrelevant. First, we do not know; second, it will be for the courts to decide. They are the true arbiters of constitutional language.

Section 2 speaks to it being a rule of interpretation. It grounds it in the 1867 Constitution. This, in and of itself, may perhaps surprise people a little bit just in practical terms when you say: "What do you mean you are putting it in the 1867 Constitution? Do you mean you are retroactively making Quebec a distinct society?" or something of that nature.

It is just an attempt to suggest that when one interprets the 1867 act as opposed to the 1982 one, one would look at all the other provisions in the light of this principle that Quebec is a distinct society, that English speakers and French speakers are a fundamental characteristic of Canada. In other words, one then turns to section 92 and analyses the provincial powers and asks: "There is an administration of justice power that has been there all along. Has that changed in some way? Has the province of Quebec now got an expanded jurisdiction?"

Frankly, I think not. I think what the courts will do with section 2 is simply say that in trying to interpret the validity of any statute promulgated by the government of Quebec, they will apply the constitutional law as it has been until now, a federal-provincial conflict, interpreting the language that is present in the 1867 act as amended and just keeping this principle in mind, that Quebec is a distinct society.

In other words, I am suggesting that I personally do not believe the presence of this clause is now going to allow Quebec to enact laws it could not enact before. If we were trying to determine whether Quebec had any ability to pass a language law at all under section 92--could they do that?--we would say to ourselves: "Gee, when we look in those clauses in section 92, there is nothing there that says specifically they can pass language laws. It comes in with education and other contexts but not under the normal section 92 powers." But you would look at section 2 and say: "There is a principle here--Quebec is a distinct society--the principle of English and



French language importance in the country. Therefore, we will interpret the general language in section 92 so as to conclude that Quebec could do so."

But it still really is that you are using it to try to interpret section 92. Did the province have power over culture before? Yes, it did. Did it have power over education before? Yes, it did. Language? Yes. The courts have said those things to date, so I think that if one were today asking the question, for example: "Who has control over television? Should this be a federal power or a provincial power?" sections 91 and 92 do not tell us. There was no TV in 1867.

We might be asking that question with section 2 in mind and we might conclude that television was a provincial jurisdiction. I think the impact of section 2 is likely to be in terms of future questions we have not yet allocated to one level of government or the other as to who has responsibility for them, but in terms of affecting our status quo, I frankly do not believe it will have a significant effect.

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Mr. Villeneuve: But it does recognize and enshrine in black and white that they are a "distinct," unique, special province or society, which was not there before.

Mr. Morse: Frankly, I think the effect of section 2 is to try to elaborate in the Constitution what had been there before. If one had looked at the Constitution last year and asked, "Is Quebec distinct or different or treated in some way different from other provinces?" the answer would have been yes. There have been provisions all along, since 1867, which have distinguished between Quebec and other provinces. In fact, we go back to the creation of the colony of Upper Canada in 1791. We chose that Ontario, or Upper Canada as it then was, would be different from Lower Canada. Lower Canada was treated differently in 1774 with the Quebec Act being passed, so we have a long history of seeing it as different from other provinces, a civil law province instead of a common law province etc. I think we would have said, "Yes, it is distinct."

If section 2 was not an interpretative clause and if it said, "The province of Quebec now has constitutional power to enact laws to make Quebec more distinct or to preserve and protect Quebec as a distinct society," in other words, made this an enabling provision, a power-granting provision, then I think we would be making a significant change. The courts would have to read into this that things were different. Where it is an interpretative clause, I do not believe the courts will ignore it by any means, but they will use it where there is some debate about how far provincial power extends. That is going to be in new debates rather than rearguing the old ones.

Mr. Villeneuve: This is the beginning of many debates. Thank you.

Mr. Morse: That there will be.

Mr. Chairman: Professor Morse, just before turning the mike over to Mr. Breaugh, I assume you will leap from your chair when you feel you have to escape to your plane.

Mr. Morse: Fine.

Mr. Breaugh: One of the concerns you have noted in here, frankly, I



am rejecting. I was a little worried that maybe these guys got a little tired and hungry until I saw their catering bill for the evening was seven grand, so I think they did all right.

Mr. Morse: They may have been tired but not hungry.

Mr. Breaugh: They were not hungry. That is for sure.

I do not think there were any mistakes made in here. I do not think there was any word chosen that was not carefully thought out. This is not exactly a document that is chock-full of radical new ideas. These are all old ideas that have been introduced and discussed for some time. They had a chance to rethink the wording before it was finalized and I believe there is evidence to indicate they did just exactly that. I do not buy any of the arguments that say: "Oh, we forgot. This was just an oversight. We did not think the Northwest Territories existed any more," or whatever. I believe the document has to be taken as is and I really do not have a whole lot of worries about that provided a number of other events can take place, like the companion resolutions if that can be worked out, and we have several interesting suggestions about what they might look like.

We have had suggestions about referrals to the court to establish whether the charter is ruined entirely or not. It seems to me, as one who is halfway through a hearing process on this, that this deal was, and you cannot get away from it, done in secret by 11 men. In fact, the way governments work, it was not quite that casual. It was not done on the back of a cigarette pack. It was done in a more formal way and there were hordes of bureaucrats outside the doors drafting little words on how one might do all this.

I am not as fearful as some might be about what I would consider to be how this will be finally interpreted. That is a kind of silly game for us to play. We do not sit on the Supreme Court yet--an appointment is due any moment but we are not there--so we cannot concern ourselves with that. As law-makers, what we are trying to determine, I think all the time, is that it is our job to put it in as clear and straightforward a way as we know how so that we know what we are trying to do here. That is as good as we get.

How does that sit with you? I am not suggesting for a moment that we put a Band-Aid on over here and patch it up over there, but it does strike me that we have had a number of really good suggestions now, made before the committee on how to deal with people's legitimate concerns about this agreement and that we ought to proceed to start work on that.

Does this accord make sense to you if those things carry through?

Mr. Morse: Let me say that I have degrees of concern about certain clauses. I think you can improve what is here relatively easily by making a number of changes which are noncontroversial ones in the sense that so many of the changes do not address Quebec's so-called five demands. When it comes time to start looking at some of those demands, it becomes much trickier.

To pick up on what you suggest, it would be worth while to try to have clearer language. Clearer language does not always mean longer language. Somehow there seems to be a suggestion from legislative drafters that whenever you wish to be more precise, you must be more wordy. That is not always the case, particularly when it comes to constitutional language; one wishes to shy away from more wordy provisions.

To take on, for example, the national shared-cost program clause, it looks almost like something straight out of the Income Tax Act for its lack of clarity. Attempting to address that one, I think, really requires an entire rewrite.

I guess what I am suggesting in a roundabout way is that, yes, I think you can improve it significantly through companion amendments that do not have to go to the heart of it. To try to address some of the other matters, such as the immigration clauses or the cost-shared clause, the financial compensation for opt-out clause, really requires a rewrite.

Personally, I think as a country we will probably survive with those clauses intact as they are now. Although I am personally not enamoured with them, I do not believe they do violence to our more commonly accepted standards of fairness and equity and our sense of justice. As a country, I think we would accept them. Some would say: "Well, I'm not happy with that clause. I think it should be changed," but that, to a degree, is the nature of the process in which we live. We are always encountering legislation or political decisions we are not entirely enamoured with.

Mr. Breaugh: I would argue, and I think it is not an unreasonable thing to do, that there is no way in hell we can please every group that comes before us, and that should not be our job. When we are all finished, there should be groups which are very unhappy with this accord because they did not get what they want, but we are looking for more a more reasoned response here. There actually have been people who came before the committee and said the nation will disintegrate the moment the accord is signed. We have withstood Brian and his folks for a while and we will withstand this one, so that is not my concern.

My concern is that there is a reasoned ground in here of things we all think we can live with, which will not rip the country apart and will not cause a whole lot of problems. I think I see that, provided some other things are done. My concern is that this package, once it is done, changes dramatically the rules on how we do a Constitution and how this country really interacts with itself. So if you do four or five things and resolve those problems, such as deal with aboriginal rights, it seems to me you have got something here we can live with.

I was impressed by people who have been arguing with the federal government for a hell of a lot longer than I have, who came before us and said: "We can go to court. We have been dealing with these folks for a couple of centuries now. They are not too easy to deal with, but we are in this for the long haul and we are not dead once this accord is signed. There are other avenues and we will explore them."

For example, it does seem to me that when representatives from the Yukon and the Northwest Territories knocked on the door, if the people inside that meeting had had the brains to invite them in and let them do what they have always done, watch, listen and speak occasionally without voting, it would have resolved a whole lot of problems. For the life of me, I do not understand why they did not do just that.

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Mr. Morse: Let me suggest there is another element to this, too, and that is, because this accord is being sold on the basis that it is what Quebec demands, then it means that anyone who is opposed to the accord is put in the



position of being an enemy of Quebec. The effect of that, of course, is to make people even angrier, because that is not the intent of many of the opponents.

What is the effect of that in the long term? If we do not change anything, people will walk away still angry. The reason they are angry is because no change is to be made. The reason no change is to be made is because Quebec demanded it. Are we not then fueling the kinds of anxieties or hatreds that can exist within the country? It is in no one's interest to be fueling that kind of concern. It is to make Quebec the so-called fall guy for all of the flaws in the agreement. Therefore, anyone who opposes the agreement must, in the long haul, turn his anger towards Quebec. I see no attraction in that scheme.

Mr. Harris: I will be very brief. I am intrigued with your comments on the unravelling aspect. If you look at one part of this, it falls apart. Others, of course, have said that, but it is kind of hitting home to me that this is a very undesirable thing in a Constitution. If each and every section and thought cannot stand on its own, then you have to ask yourself, "Does it belong in the Constitution?"

We have heard much of the hijackings that went on by premiers and, I suppose, those who prefer that view, I suspect many of us, myself included, believe much of that went on. The criticism to the Prime Minister is that he allowed it, I guess.

Would you agree that everything there should be able to stand on its own and be debated on its own merits? Does that make sense?

Mr. Morse: What we have got is a collection of disparate clauses. It is one thing to say, "Don't pull apart the Supreme Court of Canada provision because the subsections fit together" or the immigration one. But when you look at this as a package, we have got a number of completely unrelated provisions. On what basis then can pulling out one of them or altering one of them somehow cause the house of cards to come tumbling down? It is not a house of cards.

Mr. Harris: But the process that is there now for constitutional reform is a house of cards; it is a negotiating game. I think the last presenter criticized the process. What disappointed me most in his presentation is when he said, "Make them sit there for five days." I think that is worse. There are going to be a hell of a lot more compromises if the rule--

Mr. Breough: We cannot afford that either.

Mr. Harris: That is right. I mean it is seven grand, is it not?

Miss Roberts: Seven hundred dollars a night--God.

Mr. Harris: That philosophy of sit there until you get a deal does not sit well with me and leads me to believe that the process will be even more flawed if everything gets interrelated.

Mr. Morse: I can only concur with you. It is hardly attractive if what we have ended up with is a trading session behind a closed door, and what comes out is not only the first trade but a commitment that henceforth all other deals will be on a trade basis as well. There will be each province, and



the federal government will walk in and it has got a ticket price that you have got to pay if you want to get its vote, and that is not the way it seems to me to go.

Mr. Harris: That part concerns me and I think it concerns Mr. Breaugh as well. What process have we set up here for the future in these types of things? The silliest thing to me--you have mentioned it, and I disagree with your interpretation of what will happen--is that in our Constitution we now have an agenda for the next meeting and, as you say, unless they take it out for every meeting that takes place, then we have constitutionalized the process, which many of us have concerns about.

Why the agenda is in a constitutional document I will never know. I guess that had to be the ultimate compromise on those who were pushing the two items that are going to be on there. But you have said--and this is where I disagree with you--that because of that, the aboriginal people are finished. I would argue that if you have constitutionalize this process, one province holds the whole country hostage. If one province wants aboriginal rights on the agenda, they are on the agenda, if it feels strongly enough about them, because it will not agree to anything else.

Mr. Morse: They may be able to work a deal, for example, if Ontario goes forward and says, "Look, we don't much care about Senate reform, we don't care about fisheries, but Premier Peterson says we'll never give an inch on either of those unless the rest of you agree that we put aboriginal rights on the agenda." If the other 10 first ministers all really want Ontario's vote on Senate and fisheries and that is the price to pay, then perhaps they may agree.

I suggest that, at least as it is worded now, one way or another you have to get all 11 to agree to put anything on the agenda. If that is correct, then each and every province has a veto. The effect of that is they may trade their vetoes, as you have kind of proposed, to get something on the agenda.

Conversely, one province will sit there and say, "Look, we are going to veto that issue. We just will not agree. Senate and fisheries are not important enough to us. We do not care in Manitoba. We are going to veto because we do not want aboriginal rights on the agenda," or northern development or what have you.

Mr. Harris: It is an aspect that we have not talked about too much. I think a few have mentioned the actual agenda-setting process, but if your interpretation is correct, then--

Mr. Morse: "Agreed upon" suggests to me that somebody has got to agree. Since we are talking about 11 first ministers, a logical interpretation of that is that the 11 agree. Does "agree" mean unanimous or does it suggest a kind of majority rule? Given our experience of constitutional reform and referring to first ministers, I think we are looking for unanimous consent for any matter to be added to the agenda.

Mr. Harris: For those of us who are not sure that is the way to proceed, it might be the end of federal-provincial conferences to decide the Constitution too.

Mr. Morse: But only if they take this clause out of the Constitution.

Mr. Harris: If they leave it in, I do not think it will work, to be very much further--

Mr. Morse: They will at least have to meet every year on Senate reform and fisheries. It will probably keep the Chateau Laurier busy anyway.

Mr. Allen: A lot of the provisions in the Constitution have gone ignored for ages, in any case. For example, it came as a great surprise to everybody, when we got into this immigration stuff, to learn that in fact it was a shared field. Most people really had thought it was a federal action and that nobody else got in on it. Even though there were special agreements between Quebec and the federal government, still most people in the country did not cotton on to the fact that this had been there since 1867. The provinces could have acted quite legitimately in that field, but just chose not to. One can ignore things in constitutions and get along quite nicely, thank you.

I want to ask you two quick questions. First, with respect to the relationship of aboriginal self-government, the prospects of aboriginal self-government and the unanimity principle, is it your legal opinion that aboriginal self-government would fall under federal institutions properly and therefore be covered by the unanimity principle, or would it not?

Mr. Morse: My answer on that is, I believe that is still under the seven-and-50 rule. There is an argument to the contrary, but I think the majority view of all of the government lawyers and the lawyers representing aboriginal groups around those first ministers' conference tables, with the exception of a lawyer from Saskatchewan, was that the seven-and-50 rule would apply.

Mr. Allen: I want to clarify this "exclusio" business a little bit. It seems to be growing. It is like one of those expansive ideas. We first encountered it with respect to section 16, where section 28 was not referred to and therefore women were not included, therefore they were excluded, therefore they did not have the protections that aboriginal and multicultural people have secured under section 16. Now I am hearing it, and I hear it from you, with respect to the distinct society and section 2.

I am hearing it also with respect to the exclusion of aboriginal peoples--no, I am sorry, just in that respect alone. Is it not the case that in section 2 the "distinct society" language is in the context of talking about federal governments and provincial governments, and only one of those entities--namely, Quebec--houses a different society that is configured around language in a much different way, dramatically different way, so that the province as a whole, in its daily life, functions more completely in one language than in the normal language of the rest of the country. Therefore, one is talking about a province.

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When one then says that multicultural groups or aboriginal peoples are somehow or other left out because they are not mentioned in that clause, does one not have to conclude they should not be there anyway because they are not a province and do not come under the provincial-federal jurisdictions that are in the Constitution and which that particular clause refers to?

Mr. Morse: I would feel more comfortable with that argument if what the clause suggested was that Quebec is a distinct province. Instead, it has spoken to Quebec as being a distinct society, and it seems to me the language it is using here gives Quebec almost two elements. We refer to it as a province, but we also now refer to it as something other than a province;



namely, a society. Then other groups in the country that regard themselves as groups or societies, even though not provinces, feel somehow left out, that we have singled out Quebec, which I think has been distinct as a province for many years.

What, then, is the effect of calling it a society instead of saying "Quebec is a distinct province" or "Quebec is a unique province"? That, I think, would be no cause for concern because you are then speaking to it as a province alone, but using the language of "society" raises concern that we are singling it out in reference to other societies within the country of Canada and thereby suggesting that those others are not distinct.

Mr. Allen: But one can certainly see a line of argument developing in the context of Supreme Court challenges and so on. I would think, in the other direction, which would be that this is a province that houses a distinct society, which separates it from other provinces in the country, and therefore there is no point in referring to any of the other provinces in that section because they are part of that different mosaic. No one of them is distinct from the other 10 provinces in that respect.

Mr. Morse: I would suggest that Quebec is distinct not alone because of its majority French-speaking population. If that were the basis and Acadians became the majority in New Brunswick, would we thereby say that New Brunswick is a distinct society on the same terms as Quebec is? I think not.

Mr. Allen: Of course, there is the civil code and there are a number of other factors that are very important there, which you alluded to when you talked about the division in the Constitution Act and so on between the two--the creation of Ontario.

Mr. Chairman: Do you have time for one last question?

Mr. Morse: A short one, certainly.

Mr. Cordiano: I will make it brief. I just want to know your opinion with respect to the whole question that has been put forward by some that we should have a reference to the Supreme Court with respect to the charter vis-à-vis section 2 of the accord. The question would be, is the charter still paramount in light of Meech Lake?

Would it not be impossible, practically speaking, to frame such a question to cover all possible scenarios and practical situations that could arise? The question would be quite abstract and theoretical and the court would find it difficult to answer it. What is your opinion on that?

Mr. Morse: Courts have lots of experience in dealing with--at least in the view of nonlawyers--lots of abstract, arcane questions. I think the question can be phrased. I am not sure the Supreme Court of Canada would really be happy to receive it, but I think the question can be phrased, "Is section 2 subject to the charter or not?"

Mr. Cordiano: What would be the answer?

Mr. Breaugh: You gave the answer. It is in the question here already.

Mr. Morse: I think the answer from the court is that section 2 is not subject to the charter, but for a different reason. I do not think section 92 is subject to the charter either. It is a different provision in the



Constitution. The courts made it clear that you do not use one part of the Constitution, i.e., the charter, to somehow override another part of the Constitution.

I think the greater concern, however, that gives rise to that question is, does the presence of section 2 somehow jeopardize rights and freedoms that are guaranteed by other parts of the charter, such as, does it mean that there will not be freedom of speech in Quebec, or sexual equality or something of that nature? I think those really are different questions to the court that could also be framed. Personally, I think the answer the court would give is that the charter still applies in Quebec and it has not been eroded.

Mr. Cordiano: You do not see any difficulty in framing, because each of the questions that have been put before the court since the inception of the charter have been very specific, practical cases involving real-life situations, sometimes theoretical situations based on legislation that has been drafted and ready to be proceeded with by a government. In this particular case, it would be highly abstract. It would be highly hypothetical.

Mr. Morse: No, I think it is fairly concrete. You have a draft constitutional amendment here. There is specific language that the court can interpret. They dealt with something far more abstract in 1981 when they were asked if there was a constitutional convention about provincial consent. They had a look at a long history of federal-provincial relations that did not give a clear message, and deal with that with the possible constitutional proposal over here, but not really look at it. They were able to deal with that, and I would envision that they would have no difficulty in answering a precise question here that is phrased in precise constitutional language.

Whether it is believed to be necessary or not, whether you believe that you need such a decision before being able to ratify the accord as it stands, those are political questions, but I think it is a legal matter. That question could be framed to the court, it could be argued before the court relatively expeditiously, and get a decision from the court.

Mr. Chairman: Thank you very much. I think we have determined one thing this afternoon. Mr. Breaugh spoke earlier about openings in the Supreme Court. I think we had the first judgement from Judge Breaugh here in response to Mr. Cordiano. I do not know how we will judge his opinion.

Mr. Morse: In both cases, it is up to Premier Peterson under the Meech Lake accord.

Mr. Chairman: Right. It shows that we are open. Thank you very much for joining with us. We wish you luck in catching your plane.

J'aimerais maintenant inviter les représentants de l'Association des juristes d'expression française de l'Ontario, M<sup>e</sup> John Richard, président; M<sup>e</sup> Paul Rouleau, ancien président; et M<sup>e</sup> Robert Doyle, directeur général.

I would say for those in the audience who would like to make use of the interpretation facilities, there are some available at the back here. If somebody does have need, please feel free to use it.

Messieurs, nous aimerions d'abord vous souhaiter la bienvenue ici devant le comité. Comme vous le savez, vous pouvez maintenant présenter vos remarques, et puis après nous allons poser des questions. Alors, encore une fois bienvenue. C'est M. Richard qui va commencer?

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## ASSOCIATION DES JURISTES D'EXPRESSION FRANCAISE DE L'ONTARIO

Me Richard: Oui. Merci, Monsieur le Président et membres distingués du comité. Nous vous remercions de l'invitation à comparaître devant vous. Nous avons déposé aujourd'hui avec vous un mémoire qui n'est pas tellement long, six ou sept pages. Alors, je me permets de le lire, surtout que ça va permettre la traduction du document en même temps.

L'AJEFO, l'Association des juristes d'expression française de l'Ontario, regroupe quelque 500 avocats, juges, professeurs, étudiants en droit, sténographes, interprètes, traducteurs et autres membres du personnel judiciaire. Nous avons donné de plus amples renseignements sur cette association comme annexe au document.

Les 2 et 3 juin 1987, les premiers ministres ont convenu des dispositions de l'accord constitutionnel de 1987, entérinant et fixant le détail d'une entente de principe survenue le 30 avril de la même année à leur rencontre au lac Meech.

Les premiers ministres ont tous indiqué qu'ils souhaitaient voir la Législature de leur province souscrire à l'accord. C'est déjà chose faite au Québec, en Saskatchewan et en Alberta. Le premier ministre de l'Ontario (M. Peterson) a, lui aussi, manifesté l'espoir de voir sa province, et notre province, y souscrire.

L'Association des juristes d'expression française de l'Ontario reconnaît de bons éléments à l'accord dans son ensemble. Le texte de la modification à la Loi constitutionnelle de 1867 comporte néanmoins des lacunes. Il est susceptible d'amélioration.

Le français a réalisé des progrès remarquables en Ontario depuis les dernières décennies, et surtout depuis 1980. Mentionnons surtout les domaines de l'éducation et de la justice, où le français jouit du statut de langue officielle. La Loi de 1986 sur les services en français, qui entre en vigueur au début de 1989, y ajoutera une gamme complète de services en français dans tous les ministères et plusieurs organismes gouvernementaux dans les régions où habitent la majorité des francophones de la province. Alors, nous nous réjouissons de ces progrès réalisés depuis les deux dernières décennies en Ontario.

Exception faite du domaine de l'éducation, où la Charte canadienne des droits et libertés offre certaines garanties aux Franco-Ontariens, tout l'échafaudage des services en français peut s'écrouler petit à petit, ou d'un seul trait, par l'adoption d'une loi l'abrogeant. Ces services, confinés dans les lois ordinaires qui les créent, ne bénéficient donc pas de l'enchâssement constitutionnel. La position de l'AJEFO, par conséquent, est claire: Le bilinguisme devrait être enchâssé en Ontario; enchâssé, bien évidemment, dans la constitution.

Maintenant, nous citons textuellement dans notre mémoire, et je me dispense de le lire, l'article 1 de la Modification constitutionnelle de 1987. Nous avons souligné les parties que nous trouvions les plus importantes pour fins de notre mémoire.

Il ressort d'une analyse de ces dispositions que toute interprétation de la constitution du Canada doit concorder avec la reconnaissance de la



caractéristique fondamentale du Canada énoncée aux alinéas 2(1)a) et b). Cette règle d'interprétation s'étend non seulement à la Charte canadienne des droits et libertés mais aussi au reste de la Loi constitutionnelle de 1982, ainsi qu'aux lois constitutionnelles de 1867 à 1982 et aux modifications de ces textes législatifs.

Ce qui doit être reconnu, selon l'alinéa 2(1)a), est notamment «l'existence de Canadiens d'expression française, concentrés au Québec mais présents aussi dans le reste du pays». L'alinéa 2(1)b), de son côté, réclame la reconnaissance d'une société distincte au Québec. Les Canadiens d'expression française concentrés au Québec seraient-ils différents de ceux présents dans le reste du pays?

Le Parlement et les législatures ont le rôle de protéger la caractéristique fondamentale du Canada, alors qu'au Québec, et la Législature et le gouvernement du Québec sont chargés de la promotion autant que de la protection de la société distincte.

Bien que l'expression «société distincte» ne soit pas définie ailleurs dans le texte de la modification, en se référant à l'alinéa 2(1)a), il semble clair que l'élément majeur de cette société soit que l'on y retrouve surtout des Canadiens d'expression française qui y sont concentrés, mais que l'on y dénote également la présence de Canadiens d'expression anglaise. Aussi les Canadiens d'expression anglaise du Québec bénéficient-ils, en même temps et au même titre que les Canadiens d'expression française du Québec, de l'exercice du rôle de protection et de promotion qu'impose la Modification constitutionnelle de 1987 à la Législature et au gouvernement du Québec?

Par contre, en ce qui concerne les Canadiens d'expression française «présents aussi dans le reste du pays», le rôle du Parlement et de la Législature de leur province se borne à protéger et non à promouvoir la caractéristique fondamentale du Canada. Qui plus est, ce rôle n'est assigné qu'au pouvoir législatif. La protection des droits des francophones hors Québec n'est pas équivalente à celle des francophones du Québec ou, pour reprendre la terminologie de la Modification constitutionnelle de 1987, la protection des droits des Canadiens d'expression française n'est pas la même partout, selon qu'ils font partie ou non de la société distincte. La protection des droits des francophones hors Québec n'est même pas équivalente à celle des Canadiens d'expression anglaise vivant à l'intérieur de la société distincte qui, eux, obtiennent de l'accord la promotion de leurs intérêts.

Le texte de la modification de la Loi constitutionnelle de 1867 introduit de nouvelles expressions, notamment au paragraphe 2(1), où sont utilisés les mots «Canadiens d'expression française» et «Canadiens d'expression anglaise».

Que le Québec soit parvenu à faire inscrire dans la constitution la reconnaissance de son caractère distinct servira, nous en sommes persuadés, à faciliter la survie de la minorité francophone en Amérique du Nord en lui fournissant un centre de rayonnement. Mais que le gouvernement fédéral et ceux des autres provinces n'aient qu'à protéger les minorités francophones se trouvant à l'extérieur du Québec, voilà qui n'assure certes pas la survie de ces dernières.

Le statut particulier accordé aux francophones du Québec et le statut différent accordé aux francophones hors Québec introduisent une distinction entre les deux groupes. Cette distinction, qu'elle soit souhaitable ou non, mène à une règle d'interprétation de la Charte qui, elle, doit être appliquée



par les tribunaux. Dans l'interprétation des droits garantis par la Charte et dans l'application de l'article 1, on devra tenir compte de cette distinction.

La constatation d'un fait historique, à savoir que les francophones se retrouvent surtout au Québec et que les anglophones se retrouvent surtout à l'extérieur du Québec, ne devrait pas en soi aboutir à cette distinction dans l'application de la Charte, laquelle garantit des droits individuels et non des droits collectifs. La protection d'une minorité exige plus qu'une simple protection, surtout s'il ne s'agit que de protéger un acquis parcellaire et encore insuffisant. Je cite deux extraits d'une revue qui est citée en bas de la page:

«La protection d'une minorité, qu'elle soit internationale ou nationale, exige l'application de deux principes:

«- l'égalité de traitement en faveur des membres du groupe minoritaire;

«- l'adoption de mesures spéciales destinées à assurer le maintien des caractéristiques propres à ce groupe.»

Le paragraphe 2(2) de la Loi constitutionnelle de 1867, tel qu'il est suggéré par l'article 1 de la Modification constitutionnelle, n'accomplit pas l'application des deux principes précités. Il y a lieu de croire qu'il n'obligerait pas les gouvernements visés à poser des gestes en ce sens. Les minorités francophones hors Québec, en vertu de l'accord constitutionnel du 3 juin, ne sont pas présentes de la même façon à l'extérieur du Québec que le seraient les Canadiens d'expression anglaise au Québec.

Aussi estimons-nous que l'alinéa 2(1)a) proposé devrait se lire comme suit:

«La reconnaissance de ce que l'existence de Canadiens francophones, concentrés au Québec mais présents en tant que minorité dans le reste du pays, et de Canadiens anglophones, concentrés dans le reste du pays mais aussi présents en tant que minorité au Québec, constitue une caractéristique fondamentale du Canada.»

#### 1630

Le libellé que suggère l'AJEFO reprend une terminologie que l'on retrouve déjà dans la Loi constitutionnelle de 1982 et qui a déjà fait l'objet d'une interprétation par les tribunaux. Pourquoi introduire de nouvelles expressions qui risquent de saper un édifice jurisprudentiel qui, jusqu'ici, tendait à bien protéger les minorités? Le concept de «minorité», de même que ceux d'«anglophones» et de «francophones», sont connus des tribunaux canadiens. Le renvoi à la Cour d'appel de l'Ontario intitulé «Re: Minority Language Educational Rights» a bien élucidé les besoins des minorités linguistiques dans le domaine de l'éducation. L'interprétation qu'on y trouve de l'article 23 de la Charte est limpide. Elle permet aux Franco-Ontariens d'envisager leur avenir avec plus d'espoir. Là se situe, croyons-nous, la façon d'aborder le problème des minorités. Mais la teneur de ce jugement tient sans doute au libellé même de l'article 23, qui parle, lui, de minorités.

Je me permets de citer un extrait de cet arrêt, que l'on retrouve à la page 43 de l'arrêt, et vous n'avez pas le texte devant vous. On y parle de l'article 23 de la Charte, et je cite:

??«We note that, subject to the charter and section 93 of the Constitution Act, 1867, education in the province is a provincial matter. The Legislature has exclusive power to make laws in relation to education and to establish a system for the management thereof that it deems suitable to conditions in the province. Section 23 of the charter limits this power in respect to minority language education. The rights confirmed by this section with respect to minority language facilities impose a duty», and I underline the word "duty", «on the Legislature to provide for educational facilities, which, viewed objectively, can be said to be of, or appertain to, the linguistic minority in that they can be regarded as part and parcel of the minority's social and cultural fabric.

??«The quality of education to be provided to the minority is to be on a basis of equality with the majority.»

Puisque la terminologie de l'accord et de la Modification constitutionnelle qui en résulte est différente, la charge sémantique de chacune doit donc, elle également, être différente. Qu'est-ce qu'un Canadien d'expression française par rapport à un francophone, ou un Canadien d'expression anglaise par rapport à un anglophone?

Il existe une règle d'interprétation voulant qu'on doive présumer dans une loi que le même terme a partout le même sens. Une variation dans l'expression signifie un changement dans les concepts signifiés: terme différent égale sens différent. Certes, la règle de base de l'interprétation législative veut que le contexte donne leur sens aux mots d'une disposition donnée. Mais le réflexe premier de celui appelé à interpréter la modification à la Loi constitutionnelle sera de donner à la nouvelle expression un sens différent de celui des mots de la Loi constitutionnelle de 1982. La protection des Canadiens d'expression française n'équivaut pas nécessairement à la protection des minorités francophones. «Canadiens d'expression française» ne comporte qu'un élément de langue, tandis que «minorités francophones» comporte un élément de culture.

#### 1640

Le paragraphe 2(2) de la modification proposée donne au Parlement du Canada et aux législatures des provinces le rôle de protéger la caractéristique fondamentale du Canada, à savoir que les Canadiens d'expression française se retrouvent surtout au Québec et que les Canadiens d'expression anglaise se retrouvent surtout dans les autres provinces. La société distincte du Québec, elle, impose, et à la Législature et au gouvernement du Québec, le rôle de la protéger et de la promouvoir. L'AJEFO s'explique mal pourquoi le gouvernement de l'Ontario n'aurait pas, lui aussi, le rôle de protéger sa minorité et de la promouvoir, comme nous le disions plus tôt. En principe, la Législature pourrait légiférer pour protéger, sans que le gouvernement donne effet à cette législation: L'exécutif pourrait fonctionner sans tenir compte du législatif.

Alors, voilà les remarques que nous voulions vous adresser, Monsieur le Président et membres du comité.

M. le Président: Merci beaucoup. Vous avez certainement soulevé plusieurs points que, jusqu'ici, nous n'avons pas étudiés de la même façon: surtout, je pense, l'aspect de «francophones», «anglophones», «d'expression française», «d'expression anglaise» et les autres aspects de cette question. Vous avez même présenté un amendement pour notre considération. Alors, je donne maintenant la parole à M. Morin.

M. Morin: Je voudrais premièrement vous féliciter de l'excellente présentation et aussi du fait que vous êtes un de mes résidents, un de mes commettants dans ma circonscription. Vous en êtes le deuxième cet après-midi et je m'en réjouis énormément.

M. le Président: Conflit d'intérêts.

M. Morin: Peut-être.

Me Richard: Vous êtes un excellent député, je vous en félicite.

M. Morin: J'aurais deux questions à vous poser. La première: Est-ce que vous êtes d'accord que l'entente, telle quelle a été créée, même s'il existe des erreurs, est déjà une amélioration pour les Canadiens français, en ce sens qu'on y a déjà inclu une protection qui n'existait pas auparavant?

Me Richard: La protection, oui, c'est déjà quelque chose, mais nous cherchons évidemment plus. Pour nous, pour vraiment protéger, on doit pouvoir promouvoir, on doit promouvoir, avoir l'obligation de promouvoir aussi bien. Nous craignons que, quand on utilise dans le même article les mots «protéger» et «promouvoir» et que dans le cas des francophones hors Québec on utilise seulement le mot «protéger», nous soyons les perdants. Nous voudrions avoir la protection additionnelle d'une obligation de promouvoir la minorité francophone hors Québec.

M. Morin: Il semblerait aussi que les mots «preserve» et «protéger» ne donnent pas tout à fait la même définition, la même consonance.

Me Richard: Je suis d'accord avec ça, que la version anglaise est moins--

M. Morin: Elle est moins spécifique.

Me Richard: Oui, moins spécifique. Elle pourrait prêter aussi à «preserve». Si on pense peut-être--

M. Morin: Conserver.

Me Richard: --à conserver quelque chose qui est statique--

M. Morin: Mettre en boîte.

Me Richard: --qui ne change pas, c'est ça qui nous inquiète.

M. Morin: Ma deuxième question: On dit présentement que si l'entente n'est pas ratifiée, n'est pas signée, le Québec se détacherait et ça créerait des problèmes énormes. Est-ce que il n'y aurait peut-être pas la possibilité que ce serait une bonne idée, que ce serait une bonne façon, de dire tout simplement: «Mais voici, signons l'entente et faisons les corrections par après»?

Me Richard: Monsieur Morin, si les gouvernements ont la volonté de faire cela, ce serait bien. Mais ce qu'on craint, c'est que, une fois qu'un texte comme celui-ci est adopté, est enchâssé dans la constitution, est-ce qu'il y aura vraiment la volonté de la part des onze niveaux de gouvernement, ou des onze chefs de gouvernement, ou des législatures des dix provinces et du fédéral, de faire les modifications qui, à notre avis, sont nécessaires? C'est ce qui nous inquiète.



M. Morin: Certaines déclarations ont été faites tout récemment, en fin de semaine dernière, à savoir que si l'entente n'était pas ratifiée, ça créerait des problèmes énormes. Puis on nous a laissé une espèce d'inquiétude peut-être encore plus prononcée qu'on semble y croire, qu'on semble y connaître. Est-ce que je peux avoir votre réponse à ça?

Me Richard: Monsieur Morin, vous avez vu par notre présentation que nous ne cherchons pas à détruire l'accord ou même à mettre l'accord en question; nous avons dit qu'il est susceptible d'amélioration. C'est une question politique à savoir si on doit adopter l'accord tel quel et revenir plus tard avec des modifications.

Le moins qu'on puisse espérer, je pense, c'est que la Législature de la province de l'Ontario reconnaisse la lacune et se dise prête à promouvoir des modifications à l'avenir. Mais nous ne vous demandons pas ici, notre présentation n'est pas que l'accord devrait être remis en doute. Nous répondons à votre invitation et nous disons: Nous voici. A notre avis, il y a des lacunes très importantes qui nous inquiètent beaucoup non seulement comme juristes mais comme francophones et francophiles.

Je ne sais pas si mon collègue M. Rouleau veut ajouter quelque chose à cette question-là, mais nous ne sommes pas ici pour demander d'annuler ou de résilier ou de ne pas accepter l'accord.

M. Morin: Le message était très clair, d'accord.

Me Rouleau: Je pense qu'il y a juste deux aspects importants à soulever. Je suis tout à fait d'accord avec M. Richard, mais premièrement, le nouvel article 2 sème un doute; ça introduit, comme on l'a mentionné, le concept «d'expression française». Aujourd'hui, le Franco-Ontarien a une seule protection constitutionnelle, une seule: C'est l'article 23 de la Charte. Cet article a été interprété par les tribunaux de l'Ontario comme protégeant la culture et la société franco-ontariennes, c'est-à-dire l'habitat de l'espèce qui est en danger.

Là, ce qui nous fait peur un peu, c'est que ce changement qu'on voit avec l'article 2 ne parle plus de l'habitat, de la culture, de la racine du peuple, mais plutôt de l'expression de la langue. Alors, une peur qu'on a exprimée dans notre mémoire, c'est qu'on peut - pour répondre à votre question - prendre un pas à reculons comme communauté franco-ontarienne. Il faut se souvenir - et ça a été soulevé plus tôt aujourd'hui - que l'article 2 maintenant va être un filtre pour tous les autres articles de la Charte. Ce qui veut dire que notre décision de la Cour d'appel de l'Ontario, qui dit que la culture et la société sont protégées par l'article 23, doit maintenant être reprise à la lumière de l'article 2, qui dit qu'on lit cette Charte comme protégeant pas nécessairement des cultures mais l'expression. Et si les tribunaux, à la lumière du nouvel article 2, disaient: «Ah! Ce n'est plus la culture qui était l'intention des parlements, c'est la langue. Alors, cours d'immersion, d'abord que la langue est protégée.»

Je vous ferais noter que le nombre de parlants français a augmenté dans cette province l'année dernière; la minorité francophone a déperî, a été réduite. Est-ce que l'Ontario rencontre le test de l'article 2? Et nous, on trouve que c'est une question fondamentale.

1650

Alors ça, c'est un aspect important qui, je pense, a été négligé. Ce n'est pas pour mettre l'accord en doute, c'est une question de mots. Quelle était l'intention de ceux qui étaient à la table: de protéger la minorité, l'habitat de l'espèce qui est en danger, ou la langue? Nous croyons que la raison d'être est vraiment la culture, qui est, de fait, la raison de la Charte de ce pays.

Maintenant, il y a aussi l'aspect périphérique de ça qui est que, en Ontario aujourd'hui, la province fait beaucoup pour améliorer le sort des Franco-Ontariens dans le domaine de l'éducation. Ils font de grands pas. Ils ont annoncé la semaine dernière cinq millions de dollars pour une école pour les francophones à Penetanguishene.

M. Villeneuve: Il y a une petite chicane, par exemple, là-bas.

Me Rouleau: Il y a des chicanes, mais ce qui est important, c'est que l'avancement, c'est plus que juste protéger, ou ça pourrait être interprété comme étant beaucoup plus que protéger. Lorsqu'on met dans la balance que maintenant ils ont seulement à protéger et non pas à promouvoir, comme le dit la Cour d'appel de l'Ontario sous l'article 23, de nouveau on se préoccupe de la possibilité que les mots soient peut-être mal choisis.

Le point évident, c'est que, comme M<sup>e</sup> Richard l'a dit, l'Ontario refuse de se lancer dans la protection et l'enchâssement du bilinguisme, pour plusieurs raisons. Aujourd'hui, on dit avec l'accord Meech: On va couper le cordon ombilical avec le Québec. Il y a maintenant une société distincte de l'autre côté. Il serait probablement temps que l'Ontario fasse quelque chose, que ce soit dans le lac Meech ou, comme l'a été suggéré précédemment par quelqu'un qui a présenté un mémoire, par une proposition qui accompagnerait la résolution du lac Meech visant à l'enchâssement du bilinguisme.

Je pense que c'est vraiment ça, notre position. Mais on n'est pas contre l'accord, parce qu'on trouve que c'est un avancement, c'est un pas en avant. Mais tout d'un coup, il ne faut pas oublier le pauvre cousin franco-ontarien.

M. Allen: J'apprécie beaucoup ce mémoire de l'Association des juristes d'expression française de l'Ontario, et en particulier la discussion sémantique des termes «d'expression française» et «d'expression anglaise» par rapport à «francophone» et «anglophone». Est-ce normal dans des discussions juridiques de faire une telle distinction entre ces mots ou expressions? «Phone» signifie la langue, «expression» signifie la langue. ??Le peuple dans l'expression d'une langue a ??toujours une culture. La phonétique implique la culture. Est-ce vraiment possible de faire une distinction très claire et nette, pour des fins juridiques? Est-ce la pratique normale des tribunaux de faire cette distinction maintenant?

Me Richard: Ce n'est pas nous qui avons introduit la distinction, Monsieur Allen, c'est la loi elle-même. On parle jusqu'à présent dans la Charte, en particulier à l'article 23, de francophones; et maintenant, avec les modifications, on introduit une autre expression, des gens d'expression anglaise ou d'expression française. Alors, ce qui nous inquiète, c'est qu'on donne dans une interprétation un sens ou un contenu différent à ces deux expressions.

Evidemment, nous ne sommes pas là pour refaire le document, dans le sens que nous n'étions pas présents au moment où le document a été rédigé et nous



ne savons pas si les gens qui ont signé l'accord voulaient donner un contenu différent à «francophones» et à «gens d'expression française» ou à «personnes d'expression anglaise». Mais nous croyons que «francophones», c'est plus fort, que ça inclut plus que la langue, ça inclut une culture.

Nous savons que l'article 23, qui contient l'expression «francophones», a reçu une interprétation - est-ce que j'ose utiliser le mot «libérale»? - très libérale de la part de la Cour suprême de l'Ontario. Nous croyons que nous avons, ici en Ontario, une population francophone de 500 000 environ. C'est quand même une population assez fragile, dans le sens que même si c'est le plus grand nombre de francophones hors Québec, c'est quand même 500 000 sur une population en Ontario de quoi, de sept millions?

M. Villeneuve: Neuf millions.

Me Richard: Neuf millions, excusez-moi. Alors, il est important pour nous de soulever ces questions-là. Ce n'est pas seulement des questions, à notre avis, d'ordre juridique, mais ce sont des inquiétudes que nous avons parce que nous tenons beaucoup à la culture franco-ontarienne et à la survie des francophones en Ontario. Je crois que c'est partagé par tout le monde, surtout autour de cette table, de toute façon.

M. Allen: J'ai une autre question à l'égard de la pratique des cours et d'autres professions. Est-ce que la pratique dans l'interprétation des projets de loi, des articles constitutionnels, c'est d'interpréter le texte anglais à la lumière du texte français et l'inverse? Ou est-ce qu'on donne la priorité à une langue sur l'autre? Quelle est la pratique? Je pose cette question--

Me Richard: C'est une très bonne question.

M. Allen: --parce qu'on emploie, comme M. Morin l'a indiqué, les mots «preservation» en anglais et le verbe «protéger» en français, et pour moi comme anglophone, le verbe «protéger» est plus fort que le mot «préserver».

Me Richard: Oui, je suis d'accord avec vous quant aux mots. La Charte prévoit que les deux versions, en français et en anglais, sont authentiques; alors, d'une même valeur. La Loi sur les langues officielles du Canada portait la même disposition, et les textes de la Constitution de 1867 jusqu'à 1982, les deux versions sont aussi authentiques. Alors, depuis longtemps les tribunaux, quand ils ont affaire à des textes législatifs du Parlement du Canada ou à des textes constitutionnels, doivent tenir compte des deux versions et essayer de réconcilier les deux expressions pour leur donner un sens qui leur soit commun.

Il y a certaines règles d'interprétation qui se trouvent, si je me souviens bien, dans l'article 8 de la Loi sur les langues officielles. On ne peut pas dire que la Loi sur les langues officielles prime la constitution, mais ce sont les règles d'interprétation qu'on utilise dans les tribunaux pour réconcilier les versions française et anglaise des deux textes. On aura à faire face, en 1990, au même problème en Ontario. On doit y faire face maintenant, même avec les textes législatifs qui sont adoptés dans les deux langues par la Législature de l'Ontario, pour essayer de réconcilier les deux, pour leur donner un sens qui soit commun.

Il n'y a pas un texte qui soit plus authentique que l'autre.



1700

M. Allen: Merci, ça m'aide beaucoup.

Je constate comme vous, et je pense que mon parti aussi constate, que la vraie protection de la langue française et des Franco-Ontariens serait l'enchâssement de la langue comme langue officielle. Je pense que le premier ministre se sentirait mal à l'aise avec une telle démarche pour le moment.

Mais quelles limites, selon votre opinion, sont imposées aux Franco-Ontariens dans la promotion de la langue et de la culture françaises par les mots «préservation» ou «protection»? L'épanouissement de la culture d'un peuple, évidemment, exige qu'on ait des pouvoirs significatifs, mais quelle est la limite imposée par ces mots?

Me Richard: Quelle est la frontière entre «protéger» et «promouvoir»?

M. Allen: Oui.

Me Richard: Je ne peux pas vous répondre, ça prendrait des cas concrets peut-être. Mais je pourrais dire, en n'utilisant pas encore l'expression libérale, qu'il est évident, à mon avis, que l'expression «promouvoir» est plus large, a un sens plus large, un contenu plus important que le mot «protéger».

M. Allen: Est-ce que «préservation» signifie inégalité, par exemple dans le domaine de l'éducation? C'est ce dont vous avez discuté. Ou est-ce qu'il permet l'avancement vers un système totalement francophone à l'égard des conseils de l'éducation partout en Ontario? Quelle est la limite que signifie le mot «préservation»? Si on préserve la dualité de l'Ontario, cela implique peut-être, je pense, la promotion des deux facteurs, les anglophones et les francophones.

Me Richard: Je le sais bien, et en l'absence du texte de l'accord, on pourrait s'entendre peut-être sur cette expression. Mais quand on a dans le même article de l'accord, de la modification à l'accord constitutionnel, les mots «protéger» et «promouvoir», c'est une invitation à donner un sens différent à ces deux mots. Je ne peux pas répondre autrement que ça, Monsieur Allen.

Si on parlait de «protéger» uniquement à l'article 2, peut-être qu'on dirait: «Bon, le contenu de protéger, c'est suffisant pour aussi promouvoir». Mais quand on a dans le même texte, dans le même article, dans un cas le mot «protéger» et dans l'autre cas les mots «protéger» et «promouvoir», c'est ce qui nous inquiète. Est-ce qu'on va donner un sens restreint au mot «protéger» en raison du fait que le mot «promotion» ou «promouvoir» existe ailleurs dans le même article?

M. Allen: Oui, je suis sympathique à ce point de vue, mais en même temps, il y a un contexte ?? dans le pays, d'une politique, et on discute toujours, dans le domaine de l'histoire du Canada, de la balance entre les francophones et les anglophones, les provinces et le fédéral. Dans cet article il y a une ??forte balance entre deux niveaux des phénomènes au Canada. Pour le Québec, avoir le pouvoir de promouvoir la société distincte et d'augmenter le pouvoir d'un foyer principal - encore un autre mot - qui toucherait, à l'avenir, la force des minorités francophones hors Québec, on a fait cet argument-là de temps en temps dans ces discussions. Mais pour la minorité anglophone au Québec, il n'est pas nécessaire d'avoir une telle promotion, car

il existe la force de la majorité anglophone partout dans le pays pour préserver leurs droits, comme toujours dans notre histoire.

Me Richard: Oui.

M. Allen: Oui? Est-ce que les premiers ministres ont raison, dans ce contexte, d'employer deux mots différents dans cet article?

Me Richard: Nous avons dit dans notre texte que la reconnaissance du Québec comme société distincte va, nous l'espérons, aider au rayonnement du français au Canada, mais on ne peut pas s'en remettre uniquement au Québec. Je crois que la province de l'Ontario a la responsabilité, elle aussi, de promouvoir la francophonie en Ontario. On ne peut pas toujours dépendre, et on ne veut pas dépendre non plus, des politiques québécoises pour l'épanouissement des francophones en Ontario.

Me Rouleau: Vous parlez de protéger, et il me semble évident que protéger, dans le contexte de l'article 2, veut dire que l'Ontario doit protéger le caractère canadien. La majorité de l'Ontario, c'est anglais, et il y a une présence francophone en Ontario. Protéger ce fait peut vouloir dire bien des choses, et comme vous l'avez dit, la protection du côté anglophone peut être très minime; du côté francophone, la même protection ne vaut rien. Dans le domaine de l'éducation, on fait beaucoup plus que protéger aujourd'hui: On promet, on présente des lois spéciales, on présente des budgets spéciaux, on donne des droits spécifiques à la minorité, on fait avancer les choses pour les francophones parce qu'ils ont souffert. Le statu quo voue l'Ontario à la perte de sa minorité francophone.

Mais laissez-moi poser une question. Si le Québec croyait nécessaire, pour protéger le fait français au Québec, d'avoir le droit de promouvoir, comment pouvons-nous prétendre que la minorité francophone en Ontario, qui est en butte à plus d'attaques que la majorité francophone au Québec, n'a pas le droit et le besoin d'être promue? C'est un peu la logique. Quand on lit le tout, le Québec a besoin de promotion; le Franco-Ontarien, lui, va être protégé seulement. Alors, qu'est-ce que les tribunaux vont dire? Comme M<sup>e</sup> Richard l'a dit, on ne le sait pas, mais lorsqu'on le lit, il faut lire le contexte complet.

M. Allen: Vous avez raison. Merci beaucoup.

M. Villeneuve: Maître Richard, Maître Rouleau, Maître Doyle, merci infiniment pour votre présentation.

Si on avait demandé à vous, l'Association des juristes d'expression française de l'Ontario, vos recommandations, auriez-vous suggéré une société distincte ou auriez-vous suggéré un autre mot que «société», avec les réactions que nous avons vues récemment?

Me Richard: Ecoutez, il fallait choisir une expression pour donner suite à une volonté politique. «Société» implique collectivité. On a eu des débats dans le passé sur l'utilisation du mot «nation». Je crois que le mot «société» est beaucoup plus acceptable que celui-là. Quelle autre expression aurait-on pu trouver? On ne s'attaque pas à l'expression «société». Nous trouvons que si on doit reconnaître cette réalité, c'est un mot qui l'exprime bien.

M. Villeneuve: Maintenant, seriez-vous plus à l'aise si nous pouvions peut-être mettre l'accord de côté pour une couple d'années et puis

avoir des interprétations juridiques des tribunaux, qui prendraient des décisions où on pourrait peut-être avoir certaines lignes de conduite pour que, à un moment donné, nous ayons des précédents d'établis? En ce moment, nous semblons avoir un problème de ce côté-là, dans l'interprétation.

1710

Me Richard: Non, nous ne proposons pas de retard pour permettre des renvois aux tribunaux. Je ne vois pas quelle utilité ça pourrait avoir, car les tribunaux auraient à étudier quel texte? un texte possible? Non, je ne vois pas l'utilité de remettre l'adoption de l'accord ou des modifications pour permettre des renvois, certainement pas en ce qui concerne la question qui nous touche ici, à l'article 2. Je ne vais peut-être pas exprimer une opinion sur les questions qui pourraient être soulevées par les autochtones ou d'autres, mais pour ce qui est du sujet que nous visons aujourd'hui, nous ne voyons pas l'utilité de remettre ça devant les tribunaux. Nous sommes inquiets du fait, et nous croyons avec raison, qu'on utilise des expressions différentes auxquelles les tribunaux pourraient accorder, dans des cas spécifiques, un contenu différent.

M. Villeneuve: Pour terminer ici, je reviens à la société distincte. Est-ce que ça se limite aux choses linguistiques, aux choses culturelles, d'après vous comme juriste, ou est-ce que ça se répand à des domaines économiques - en fin de compte, à tous les domaines gouvernementaux?

Me Richard: Il est difficile d'y répondre parce que ce n'est pas défini. Vous savez, lors de la conquête, ou très peu après la conquête de la colonie du Québec, la Grande-Bretagne a adopté une loi appelée l'Acte de Québec, en 1774 - c'est le gouvernement à Westminster qui a adopté cette loi-là pour la colonie du Québec - et qui reconnaissait principalement, à ce moment-là, la langue, la religion et le Code civil, la coutume de Paris.

Alors, à mon avis, même au 18<sup>e</sup> siècle on reconnaissait que le Québec était une société distincte, puisqu'il faut se rappeler que même si le Canada n'était pas colonisé bien loin à l'ouest du Québec, les colonies au sud, qui s'appellent maintenant les Etats-Unis d'Amérique, faisaient partie des colonies britanniques. C'étaient toutes des colonies britanniques à ce moment-là. Alors, on nous a donné un statut distinct. La Grande-Bretagne, à mon avis, d'après mon interprétation de l'histoire, a accordé un statut distinct au Québec alors qu'il était l'une des colonies britanniques dans toute l'Amérique du Nord. Le contenu à ce moment-là, c'était la langue, c'était la religion, c'était la coutume de Paris, c'est-à-dire le droit civil.

Qu'est-ce que «société distincte» veut dire aujourd'hui? Pour moi, ça a une connotation sociologique surtout plutôt qu'une connotation économique. Alors, c'est distinct en raison des facteurs sociologiques du Québec plutôt que des facteurs économiques. Sans ça, ça n'a pas grand sens, à mon avis.

M. Villeneuve: Je sais que la traduction n'est jamais facile, surtout quand nous sommes dans des termes juridiques, comme nous allons l'être ici. Je crois qu'en français nous avons un vocabulaire un peu plus large et que nous pouvons préciser nos mots. Alors, je crois que ça va être un choix de mots qui va probablement être la décision du côté du texte français.

Un francophone pour vous et un Ontarien d'expression française, ou deux gens qui peuvent s'exprimer en français en Ontario, un francophone, d'après vous, est-ce qu'on devrait viser à «francophones» ou à «Ontariens d'expression française»?



Me Richard: Dans quel texte?

M. Villeneuve: Dans le texte de l'entente du lac Meech.

M. Morin: Il y a eu un amendement, pas une recommandation.

Me Richard: On prétend que ça devrait être «francophone» parce que, à notre avis, «francophone» inclut un élément de culture aussi bien qu'un élément de langue.

M. Villeneuve: J'oserais suggérer que dans ce contexte-là nous avons moins de francophones en Ontario que nous en avons d'Ontariens d'expression française.

Me Richard: Non. Nous cherchons évidemment à protéger et à promouvoir l'usage de la langue française et de la culture francophone parce que «francophone» inclut, à notre avis, l'expression «par la voie de langue»: en d'autres mots, d'expression française.

M. Villeneuve: Une culture française aussi.

Me Richard: Bien, une culture en plus. «Francophone» inclut, en plus de la langue, un élément de culture.

M. Villeneuve: C'est ce à quoi vous visez. C'est ce que vous voulez protéger, majoritairement.

Me Richard: Oui, et puis la Cour suprême de l'Ontario a reconnu l'application de... je vais le citer.

M. Villeneuve: Oui, l'article 23, je crois?

Me Richard: Sous l'article 23: ??«It can be said to appertain to the linguistic minority in that they can be regarded as part and parcel of the minority's social and cultural fabric.» Alors, en utilisant le mot «francophone», non seulement il y a l'élément de langue mais il y a un élément de culture et de société.

M. Villeneuve: Il y a toujours une situation, on pourrait être frustrés, nos collègues qui ont peut-être acquis la langue mais qui, par contre, ne seraient pas considérés à ce moment-là.

Me Richard: Non, c'est pas ça qu'on vise.

M. Villeneuve: Non, mais ça pourrait être interprété de cette façon.

Me Richard: Ecoutez, ce à quoi on vise, c'est à protéger la langue française et la culture francophone.

M. Villeneuve: Merci.

Mr. Offer: I would like to thank you very much for your presentation.

My question revolves around what has already been brought up, in particular the amendment you have suggested with respect to clause 2(1)(a) of the accord. It seems to me, in my opinion--and I would ask you to comment on this--that the amendment you are suggesting is not so much an amendment as a very fundamental change to the particular section.

The section as now written--and I realize it is but an interpretive section--seems to recognize as a fundamental characteristic the existence of French-speaking Canadians and English-speaking Canadians within Canada. The amendment you have suggested seems to say that an element of that fundamental characteristic is indeed the minority aspect to the anglophone and francophone experience.

I have a concern, and I would ask you to comment, as to whether in dealing with a fundamental characteristic of a nation we should be dealing within an interpretive section with the whole question of what is that characteristic--indeed, in this case English- and French-speaking persons within the country--as opposed to taking away from the fundamental characteristic in that respect and saying it is something where there is a minority aspect attached. My concern is that your amendment might work in such a way that it will provide less for a court to use in the interpretation of matters coming before it, and I am wondering if you have looked upon this section in that light.

Mr. Richard: We have got the use of the words "minority" and "linguistic minority" already in the charter, which is, of course, part of the Constitution.

1720

Mr. Offer: You are referring to section 23?

Mr. Richard: Yes.

Mr. Offer: In response to that, section 23 is in many ways very different from section 2, in that section 23, and I imagine you will agree, is a rights-giving section, whereas section 2 of the accord neither gives rights nor takes away rights. It is an interpretative type of clause, to be used by courts in matters which come before it, to be used by others in matters which come before it.

I am not comfortable with the comparison of section 23, a substantive type of section, with section 2, an interpretative section. I am just having difficulty with the amendment you have suggested.

Mr. Richard: I may be wrong, but I get the impression you are not happy at all with the interpretative provision, referring as it does to French-speaking Canadians or English-speaking Canadians.

Mr. Offer: No, I am concerned with the amendment you have suggested, whether it takes away from the whole fundamental aspect or characteristic of Canada.

Mr. Richard: We think that if there is going to be a rule of interpretation, rather than using the words presently in the accord, I think the words we propose would be better suited. We do not think it would take away or diminish rights. We are suggesting it because we think it would enhance them.

Mr. Offer: I am not saying it would take away or diminish rights. I am saying that the use of the words you are suggesting as opposed to the words which are now in it would be less strong in the application, in how they are applied.

Mr. Richard: I do not know how, by using the words "francophones" and "anglophones"--

Mr. Offer: I am concerned with the minority aspect of it, as opposed to saying: "It matters not with respect to the numbers. The fundamental characteristic in the country is the existence of French- and English-speaking persons and the question of whether they are a minority is not to take away from the fundamental characteristic."

Mr. Richard: No, you have to get to the obligation.

Mr. Chairman: Just in trying to get the distinction, it would seem to me that what you are suggesting by the use of the word "minority" suggests a collectivity, suggests something beyond an individual. In that sense, in your mind, that is a stronger term than the way it is phrased.

Mr. Richard: That is right.

Mr. Chairman: They may have different meanings. The courts may interpret them the same way. But from the point of view of the linguistic minority, that phrase would suggest or would have within it not only a sense of individual but also of collective rights.

Mr. Richard: Yes, that is true.

Mr. Chairman: I am just not sure if Mr. Offer--

Mr. Richard: Then when we get to the question of whether it imposes an obligation, there can be a debate about that. Although it says, "Toute interprétation de la Constitution du Canada doit concorder avec...", it then goes on to say--I have the French text in front of me--that the role of the Parliament of Canada and the provincial legislatures to preserve the fundamental characteristic is affirmed.

Maybe in that sense it does not impose an obligation, but it certainly gives it a role and what a role means. I think it is a little more than just interpretative. It starts off as being an interpretative provision, but then it goes on to give a role to legislative bodies in one case and a legislative body and the government in another case to do certain things.

Mr. Rouleau: To try and answer further, we are not saying we want to preserve the minority aspect, which I think is your concern. We are saying that the minority, as was suggested, better identifies the group you are trying to protect. You are trying to protect the minority, not a language. You are not saying, "We want to preserve Latin in Ontario." We want to preserve the minority, not just the language.

To take it one step further, you say you do not like the comparison between section 23 and section 2. What I think we are answering is that the two words clash so you are going to have a problem with section 2 and section 23, and if it results in section 23 not being interpreted as it has been in the past, we have a concern. At the very least, exclude section 23 from the application of section 2, but also make sure that you identify what you want to protect. I do not think it is a fundamental characteristic of Canada that people speak French. That is a part of the fundamental characteristic, a necessary part, but that is not all. I think that is really our position.

Mr. Offer: Thank you.



Mr. Chairman: Just wanting to be very clear here, by minority we are talking of the official language minority because that is an identified group of people in statute and in other parts of the Constitution.

Mr. Richard: Yes.

Mr. Harris: Just to follow up with the angle Mr. Offer is on, you have difficulty with Quebec on the word "promote."

Mr. Richard: I do not have difficulty with that at all.

Mr. Harris: But you have difficulty in that it is not an obligation of the rest of the provinces.

Mr. Richard: Yes, and in particular, Ontario.

Mr. Harris: Except that to me, that section on Quebec promoting is not promoting a minority there. It deals with why Quebec is different as a province. In fact, they are promoting a majority language in that province. I do not know why, because that is in there, that diminishes anything that is already in existence. I understand you would like to have something else in the Constitution that clarifies what Ontario should be doing with a minority. I am not a lawyer, but the quid pro quo to me would be, Quebec will promote the French language and Ontario will promote the English language in Ontario. If you ask me to do that, I could say that has a logic to me.

Mr. Richard: I do not know why you say that is a quid pro quo.

Mr. Harris: Because what is being suggested in Quebec is that it will be able to promote the majority, not the minority. That section does not deal with protection of a minority.

Mr. Richard: I disagree with you on that point, Mr. Harris.

Mr. Harris: In Quebec.

Mr. Richard: In my view, when you are talking about a "distinct society" in Quebec you are talking about a society that had to recognize that there were two language groups.

Mr. Harris: I agree, but it is dealing with Quebec as a province, and what is making Quebec different from the rest of Canada, to me, is that it is the only province where the French language and those who are of the French culture are in the majority.

Mr. Richard: I think that is a fact. I am not disputing that.

Mr. Harris: Is that not what makes it distinct?

Mr. Richard: I tried to answer. I think it is more than that. In answer to Mr. Villeneuve, I said it was a sociological concept, which to me includes more than language. I think the English-speaking population or the anglophones in Quebec are part of that "distinct society." My interpretation, and we have said it in our brief, is that they have an obligation to promote both. If I am wrong in that interpretation, that is a different matter.

Mr. Harris: As I said, I am not a lawyer and I am trying to understand. I understand what you are asking for and that is fair and that is

fine, but I am not convinced that anything that is in Meech Lake or Langevin or whatever you want to call it, that talks about the rights of Quebec, defines it. It is a province. That clause does not talk about minority rights. It is how it is perceived as a province. How does that diminish in any way any minority rights in other provinces or minority rights of francophones in other provinces? I am having trouble being convinced that it makes any difference at all.

Mr. Richard: It is not a question of whether it diminishes it. It is a question of whether there is a corresponding obligation. I think you recognize that from the preamble.

Mr. Harris: But to me the corresponding obligation that would flow from that is to promote English in Ontario.

Mr. Richard: Well, fine. I have no problem with that, but I also want you to promote French.

Mr. Harris: I do not think anybody is asking for that or that is necessary.

Mr. Richard: No, but we are asking that you promote French.

Mr. Harris: If you said to me that Quebec then has an obligation to promote English and French in Quebec, and by the same token Ontario should have an obligation to promote English and French, I would understand that.

Mr. Richard: Sir, I think that is what we have said.

Mr. Harris: That is not what you have asked here.

Mr. Richard: That is exactly what we have said in our brief.

Mr. Harris: That is what you would like to see?

1730

Mr. Richard: It is not what I would like to see. What I would like to see is the corresponding obligation in Ontario.

Mr. Harris: But to me the corresponding obligation is to promote English, if you want to have the sections the same. If you want a separate section that talks about the minority language rights in Ontario, I understand that. I am not unsympathetic to it.

Mr. Richard: Minority French-language rights.

Mr. Harris: Yes, or minority French culture rights, if you want.

Mr. Chairman: Again, to be clear, what you are saying is that in terms of Quebec, you read that as it has an obligation to promote English and French and you would see using those words to have that same obligation for Ontario, New Brunswick, whatever. That is what that would mean. It would not just mean to promote English.

Mr. Richard: Because we have as the role of the Parliament of Canada and the provincial legislatures to preserve the fundamental characteristic of Canada. The fundamental characteristic is the "existence of French-speaking

Canadians, centred in Quebec but also present elsewhere," in English-speaking Canada, and "English-speaking Canadians concentrated outside Quebec but also present in Quebec." The obligation is on the provincial legislatures, including the Ontario Legislature, to preserve this fundamental characteristic.

You already have "preserve English and French in Ontario," and what we are saying is that we want--we are looking at it from the francophone point of view but it logically flows in exactly the way you said it--not only to preserve, but to promote. Obviously, as a francophone group, we were looking at the francophone promotion but we certainly are not saying that you should not also promote English. If you have to protect English in Ontario and protect French, then if you promote French you would promote English as well.

Mr. Harris: I do not think you have to protect English in Ontario. Let us face it, Quebec is sitting in a milieu in Canada and in North America that is special. That is why Meech exists. That is why the "distinct society." That is why the extra rights, if you want, or extra obligations on Quebec.

Mr. Richard: But people are people and language is language. Why should francophones outside Quebec not have their language promoted as for francophones within Quebec, and as we understand it, from our interpretation, as for anglophones within Quebec.

Mr. Harris: I guess I am not convinced that the interpretative clause used there to define a provincial power vis-à-vis how it relates--I am not sure that they are getting something to the detriment of francophones outside. It may be, but I have not--

Mr. Richard: I am not saying it is to the detriment. I am being positive here. I am not trying to take anything away from Quebec.

Mr. Chairman: Just a short, sharp, last supplementary.

Mr. Offer: As a short, sharp, last supplementary, is it your feeling that the use of the word "preservation" only, as opposed to "preservation and promotion," is a stultifying process for the provinces, in other words, that in the 1980s, in the evolution of the country, the mere fact that now it is constitutionally required that all the legislatures preserve something will, keeping in mind the whole realities of how we are evolving, require the legislatures to enhance different programs such as the French Language Services Act, things of this nature, or is it your feeling that your concern with the word "preserve," without "promote," means that the service shall now be frozen in time, that there is no evolution?

Mr. Chairman: Can I have a short, sharp answer to that?

Mr. Offer: It is about as short as I remember.

Mr. Morin: As you are accustomed to do.

Mr. Richard: My answer is that I think this is an advance because it does provide for protection. I think it is an advance. I just say that it does not go far enough. Because of the way the protection and promotion factors are used when talking about Quebec, I think we should have similar language when talking about the other provinces in relation to minority languages. I certainly think it is an advance over what we have in the Constitution.



M. le Président: Nous vous remercions infiniment d'être venus cet après-midi, d'avoir présenté votre mémoire et aussi d'avoir répondu à nos questions. Nous avons beaucoup de travail à faire et ça va nous aider énormément d'ici la fin de nos séances et dans la publication de notre rapport. Alors, encore une fois, merci beaucoup.

Me Richard: Merci, Monsieur le Président et membres du comité.

Mr. Chairman: We will reconvene tomorrow morning here at 9:30.

The committee adjourned at 5:36 p.m.



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SELECT COMMITTEE ON CONSTITUTIONAL REFORM

1987 CONSTITUTIONAL ACCORD

TUESDAY, MARCH 22, 1988

Morning Sitting

Draft Transcript



SELECT COMMITTEE ON CONSTITUTIONAL REFORM

CHAIRMAN: Beer, Charles (York North L)

VICE-CHAIRMAN: Roberts, Marietta L. D. (Elgin L)

Allen, Richard (Hamilton West NDP)

Breaugh, Michael J. (Oshawa NDP)

Cordiano, Joseph (Lawrence L)

Elliot, R. Walter (Halton North L)

Eves, Ernie L. (Parry Sound PC)

Fawcett, Joan M. (Northumberland L)

Harris, Michael D. (Nipissing PC)

Morin, Gilles E. (Carleton East L)

Offer, Steven (Mississauga North L)

Substitutions:

McGuinty, Dalton J. (Ottawa South L) for Mr. Elliot

Villeneuve, Noble (Stormont, Dundas and Glengarry PC) for Mr. Eves

Also taking part:

Daigeler, Hans (Nepean L)

Clerk: Deller, Deborah

Staff:

Bedford, David, Research Officer, Legislative Research Service

Witnesses:

Individual Presentations:

Roy, Albert J.

Léger, Huguette, coordonnatrice provinciale, Union culturelle des  
Franco-Ontariennes

Peladeau, Claire, membre, Union culturelle des Franco-Ontariennes

Martel, Thérèse, vice-présidente, Action Education Femmes--Ontario

Riese, Monique

LEGISLATIVE ASSEMBLY OF ONTARIO

SELECT COMMITTEE ON CONSTITUTIONAL REFORM

Tuesday, March 22, 1988

The committee met at 9:35 a.m. in Algonquin Salon A, Delta Ottawa Hotel.

1987 CONSTITUTIONAL ACCORD  
(continued)

M. le Président: Bonjour. C'est vraiment un grand plaisir de souhaiter la bienvenue à Maître Albert Roy, quelqu'un que la plupart d'entre nous connaissons très bien. C'est un ancien député. Si je me souviens bien, Monsieur Morin, ne serait-ce pas - non, c'est la circonscription de M. Grandmaître.

M. Morin: C'est la circonscription voisine, excepté que M. Roy est aussi un de mes commettants.

M. le Président: Ah bon.

M. Morin: Il vit dans la circonscription.

M. le Président: Alors, quel bonheur ce matin!

Monsieur Roy, comme je le disais, c'est un plaisir de vous souhaiter la bienvenue. Si vous voulez présenter vos commentaires, nous vous poserons des questions après.

ALBERT J. ROY

Me Roy: D'accord, Monsieur le Président. Je ne suis pas sans savoir que le temps est assez limité pour faire des représentations ici. Alors, pour fins de brièveté, peut-être que ce que je pourrais faire, c'est de répondre à des questions, en français ou en anglais selon la langue dans laquelle elles sont posées. Mais pour fins de mes commentaires, peut-être que je pourrais les faire plus brièvement en anglais, et s'il y a des questions, je peux certainement y répondre en anglais ou en français. Je ne suis pas sans savoir non plus que m'amuser avec de petites bobines comme celles-ci, des fois ça devient un peu aachalant.

M. le Président: En Ontario, on est de plus en plus bilingue.

Me Roy: Oui, je comprends, Monsieur le Président. Mais avec votre permission, je voudrais tout simplement faire certains commentaires. Je vais les faire en anglais ou, de temps à autre, peut-être en français, mais surtout en anglais et, comme de raison, je vais répondre à des questions, si vous en avez, dans la langue dans laquelle elles seront posées.

Mr. Chairman, thank you for the kind words, the welcoming. I want to thank you and the members of the committee for the opportunity to make a few brief comments on a subject that I personally and on behalf of people I represented in this part of the woods for a period of about 13 years have taken very seriously. I know you have been involved in this topic yourself, Mr. Chairman. I do not know if it has been longer, but I think it has been a

bit longer, because you started in the late 1960s with John Roberts's Confederation of Tomorrow Conference; so I think you are an appropriate candidate to chair this particular committee, without being too partisan, of course.

Mr. Breaugh: You have never been known for that.

Mr. Roy: I want to thank all of you and congratulate you on the initiative you are taking. I know there is some cynicism around the province, saying: "It is a fait accompli. Ontario is going to approve the accord, and let's get on with it. We don't need these public hearings." I do not subscribe to that. Even though I feel strongly that the accord should be accepted and approved, I nevertheless feel that the more public participation you have, when you hear from the citizens of Ontario, when you hear the different views and the objections and some of the concerns that people have, this is part of the democratic process, and it seems to me that that is important.

Your function may well play a very important role in suggesting major amendments or major suggestions. I do not know if I would call them amendments, but I think you can play an important role in making recommendations to the government and to the governments of other provinces that are still expressing some reluctance about this accord.

I do not intend to go into the constitutional aspect of it. I know you have had representation from such learned constitutionalists as Professor Hogg and my friend the former dean of the faculty of civil law at the University of Ottawa, Professor Beaudoin, and, I am sure, others. I notice on your list that there will be more coming, people who are far more expert than I am on the constitutional legalities.

I am aware as well of the great concern on the part of certain groups about this accord, be they groups such as the representatives from the Northwest Territories, the Yukon, women's groups or minority groups both within Quebec and outside of Quebec. I am aware of their concerns as well.

0940

What I want to give just a brief perspective as I see the process as it has evolved, just as a citizen. I apologize, Mr. Chairman, ladies and gentlemen, that I do not have any written submissions. Being involved in a busy law practice, we tend sometimes to forget about sitting down and putting things on paper. I do not want to think that my submissions would have more weight if they were on paper, but I know that it is more helpful when you do have something in writing, and I apologize for not having that. We work in private practice. We have limited staff and limited time and sometimes we just do not get matters together, so I apologize for that.

Mr. Chairman: Unlike government.

Mr. Roy: I will not make any comment.

Mr. Villeneuve: You were spoiled before.

Mr. Roy: In fact, I do not recall ever preparing written submissions. I find I am somewhat constrained by anything in writing.

Mr. Chairman: I was going to make that comment.



Mr. Roy: I just want to look at the overall perspective of what brought the agreement on and to talk as one who was around the Legislature and has watched the process which started around 1971. As I watched the rise of nationalism in Quebec, I recall René Lévesque in the days even when he was with the Lesage government and his nationalistic utterings in Quebec and then the founding of le Parti québécois in the late 1960s.

I recall that at that time that was the context. The early elections of René were not very successful. I recall the Prime Minister of Canada at that time, Pierre Trudeau, had said that separatism was dead. I think it was about the early 1970s when Lévesque could not get himself elected in the Legislature. That was a context we took for granted. It was interesting that it was Bourassa then who was getting these fantastic majorities in Quebec.

People were sort of taking things for granted. I recall in Ontario we took a lot of things for granted as well. From the period when I was able to observe it at first hand, from 1971 to 1976, the advancement of francophone rights and services did not progress very much during that period. The credibility of Ontario vis-à-vis Quebec because of the frustration on the part of the francophone minority in this province was very high indeed.

I recall the election of le Parti québécois in 1976 and the absolute panic and confusion that was in the Legislature. People were saying: "What does Quebec want now? What is happening? Is this country going to fall apart?" I recall at that time thinking that this province--Ontario--would have had much more credibility had we taken steps to have an objective or a meaningful rapprochement with Quebec. If we could have pointed to some of the initiatives that have been taken on behalf of francophones within the province by this province, which is now saying Quebec is wanted within Confederation, we would have had far more credibility, had we some tangible evidence to show we had made progress in Ontario.

But that was not the case, of course. There was panic and confusion. I recall at that time that the only time I ever heard Bill Davis say anything in French was after the 1976 election of le Parti québécois, out of a sense of frustration, sort of expressing or wanting to make Quebec feel at home; but I just felt it was so late and it was so superficial that it was certainly not effective.

Many of you recall the referendum of 1980. In fact, a legislative committee was set up at that time in 1980 of all parties. I look at the colleagues here and I do not if any of you--I do not think so--were sitting on that legislative committee. Our late colleague Renwick was on this committee, Sean Conway, myself and others. We travelled all across Canada and into Quebec and tried to get the views, to see what was happening and how Ontario could contribute to that dialogue and how we could make Quebec feel at home within Confederation.

I recall all of that very vividly. I participated actively in the referendum. I went into certain areas of Quebec with some of my colleagues who were elected provincially and participated in the referendum process. People tend to forget that the federalist forces were losing that referendum in the early part of the process. It was only the active involvement of people like Pierre Trudeau and others who made a tangible commitment to Quebec at that point that things would change, that there would be renewed federalism and that Quebec would be made a full partner within Confederation, that helped turn things around.

There were major mistakes made by the anti-indépendistes forces. The classic one was Lise Payette and her comments about the wives of those who were in favour of federalism. I think she called them les Yvettes. That was a major blunder which ignited some of the federalist forces in Quebec. Then the referendum was won, the federalist forces prevailed and we went on to the agreement of 1982 and the frustration at that time in 1982 that Quebec was excluded.

In fairness to those who were bargaining at time, it was not easy to come to an agreement with the government, with a group of individuals whose major platform was independence. It is not easy to arrive at a consensus in that sort of context. Nevertheless, I think there was clear unanimity in Quebec by all those elected, not only the indépendistes, le parti Québécois, but also the Liberal Party and others, that they were not going to subscribe to the 1982 agreement. They felt frustrated and betrayed.

I see Meech Lake in that sense and in that context as keeping that agreement or that promise that we had made in the 1980 referendum. We have kept our faith with Quebec. Basically, Meech Lake is an attempt by the rest of the country to make Quebec a full partner in Confederation.

I heard Robért Bourassa, the Premier of Quebec, say he was proud to be a Canadian. It has been a long, long time since we had heard anything like that from a Premier in Quebec. I am not talking only about René Lévesque. Back in the days of Jean Lesage, Daniel Johnson and others who followed, you did not often hear that comment coming out of Quebec.

We have with Meech Lake an agreement which has the overwhelming support of Quebec and the overwhelming support of most of the provinces. I think this is something we should keep in mind. Meech Lake is not perfect. I realize that, but I think the major thing we must say about it is that in a sense it is evidence of our commitment, that we have kept our word. Quebec renewed its faith in Confederation in 1980, and I think the rest of Canada is doing so by the Meech Lake agreement.

I understand, I agree and I am well aware of the groups that have made representation that the agreement is not perfect. I was disappointed in 1982 when in that particular constitutional agreement there were no constitutional guarantees other than in education for francophone minorities outside Quebec. I was deeply disappointed then and I am deeply disappointed that there are still some flaws in the present agreement vis-à-vis minorities. You have had submissions on this from my good friend, Jean Richard, who is the president of the Association des juristes d'expression française de l'Ontario.

I am aware as well and I feel that the exclusion, for all intents and purposes, of groups like the Northwest Territories and the Yukon in the process is something that has to be corrected. I am concerned that certain women's groups feel the Charter of Rights and Freedoms may be overridden by the "distinct society" clause. There is constitutional disagreement on that point. You certainly have heard those submissions. Nevertheless, in spite of this, you do not go back on this particular agreement. I think you build on it.

0950

If I may suggest, Mr. Chairman and members of this committee, what you do is accept the agreement for what it is. Then you make submissions on the basis of, "Here is what we have accomplished, but there are some major flaws." Surely these are some things that have to be corrected. But I do not think you



reopen it. Once you have an agreement that has such overwhelming support inside and outside of Quebec as well, you move forward and build on it.

My concern is that at this time some people may say that in the context of today, of 1987-88, the forces of nationalism are dying, are weak, are dead. People kid themselves about that. I look at the caricature in the Globe and Mail this morning. Did you see the caricature which has got portly Parizeau sitting on a dead horse, the dead horse of independence, I guess? I think that might be the case in 1988 presently, but le Parti québécois with Parizeau heading it still has as its main plank independence. It is the only viable alternative in Quebec as a political party at the present time. Those who think that situation will continue for ever are kidding themselves. Just like when we were talking about separatism being dead in the early 1970s, it is foolish to think the forces of nationalism and the forces of independence are dying.

From the point of view of keeping the faith with Quebec and from a very practical point of view, we have an agreement now. You have heard other constitutional people talk about the price we have had to pay to get this agreement. I do not think the price, frankly, is too high. I think we should accept it. What this committee should be doing is making serious or strong recommendations to people like Premier McKenna, who is expressing some reluctance about accepting the agreement. I think this committee should make those recommendations, but strongly suggest that there are flaws and weaknesses and these weaknesses should be corrected at the first possible opportunity. But I do not think you should go back at this particular stage on it.

Those basically are the brief comments on Meech Lake.

Mr. Chairman: Thank you. If I could start the questioning, one of the issues that has emerged more recently has been the statement by the Fédération des francophones hors Québec, ACFO and Alliance Québec with respect to their, I suppose, increasing lack of support for the accord. I want to put the question this way. You yourself are from, if I remember, Gravelbourg in Saskatchewan and you have lived in Ontario in terms of your professional life.

Because of the concerns the official language minority organizations have raised with respect to what they see as not just the preservation but promotion, if you like, of official language minority rights, can you give your assessment of that issue? What might we be suggesting that perhaps we not mean a rejection of the accord, but would be the kinds of things you think we could be recommending to help calm the fears that the major official language minority groups have been expressing and expressing pretty vigorously to this committee?

Mr. Roy: I think that is such an important issue, Mr. Chairman.

As I said earlier, I was deeply disappointed after that in 1982 when I looked for a while as though Ontario might accept some constitutional guarantees other than just education for minorities in this province. You recall that—I can recall that. I was attending that constitutional conference, and I can recall the big, red headline in The Toronto Star, a Bill Davis' reaction at that time. Without being partisan, Bill Davis was always very nervous when we talked about language, and his reaction was just back off completely from what appeared to be an initiative taken by Ontario. I was deeply disappointed by that.

I want to say that I agree with what they are saying. I guess the



difference is if they are saying the accord should not go forward without these amendments, that it should be reopened, I have some reluctance to go that far, because in my opinion, one of the best guarantees for French-language minorities outside Quebec is a strong Quebec government within Confederation. I mean, just imagine an independent Quebec outside, what that would do with minorities within the rest of the country. I think it is not as though it is only giving something to Quebec. I think even from self-preservation, that is maybe one of the most important factors.

Knowing the importance of constitutional guarantees--and just to give you an example of how important it is to have these constitutional guarantees for minorities outside Quebec, you can see right now in Ontario some of the advancements that have taken place within education. One of the reasons for that is because minorities were able to use the courts, based on section 23 of the Charter of Rights and Freedoms, to advance education. You recall we went to the Court of Appeal. In fact, I was one of the participants arguing before the Court of Appeal about the rights under section 23. The same thing has happened to those minorities in Saskatchewan, and likely will happen in Alberta because Alberta and Saskatchewan apparently, constitutionally, are in about the same position. So, that it is extremely important for them.

Back in the days when I was a member of the Legislature, I think in the early 1980s, I proposed a private members' bill which would have given constitutional guarantees to matters other than language within the Ontario. It certainly would not be very difficult for Ontario to give those guarantees now, for instance, in law, in the courts. I mean, we have a whole process which is functioning in the courts presently. There is no reason why, if it was given a constitutional guarantee, that it would cause any difficulty in that sense. And I think you could move on.

What I would suggest, Mr. Chairman, is that the committee suggest that there be--as was suggested by L'Association des juristes d'expression française--at least as a first step--as I recall reading the agreement, I think it talks in Quebec about preservation and promouvoir, I think, rights of the anglophone minority within the Quebec and for the minorities outside the Quebec, it talks only about preserving. I think certainly there should be a balance and I agree with les juristes that it should not only be protecting or preserving but there should be--to promote, promouvoir, as well, the rights of minorities outside Quebec.

Considering we are talking about the Ontario, it would not be difficult, I think, for this committee to suggest that if there are certain areas presently in Ontario where constitutional guarantees could be given to the minorities outside--other than education--and I suggest the courts is one area. There may be other areas, for instance, health services, that would not cause great disruption in the province. I am aware that with Bill 8 we are moving forward. There are legislative guarantees to French-language services in this province. Francophones are no different from any other group. There is nothing like constitutional guarantees to make them make feel at home and to give them the absolute protection.

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I think that it would be wise for this committee to suggest that, if I may say this respectfully, you move ahead with the agreement but that you make strong recommendation that there are weaknesses in the areas that have been suggested, like those suggested by Association des juristes d'expression française de l'Ontario, and that Ontario can move forward by giving

constitutional guarantees in other areas.

Mr. Allen: It is a pleasure to have Mr. Roy before us. Having enjoyed his company in the Legislature for a number of years, it is always good to renew that acquaintance. I wonder if I could ask much the same question but from a slightly different point of view. If one recognizes in the first instance, as I think you do politically, that even to move beyond the word "preservation" in some provinces would be almost impossible to get agreement across the board from all the premiers--

One cannot imagine Mr. Vander Zalm, having opposed French on corn flakes boxes and so on a few years ago, being willing to move not just to preservation but also to promotion of the French language in British Columbia. Politically, that does not sound like it is very much of a possibility, it is a nonstarter, quite frankly. When we ask about moving beyond in terms of any realistic possibilities, we are really talking about fine-tuning rather than what is really possible.

Could you perhaps, turning to the positive side of all that, give us your opinion as to what remains possible to do within the bounds of the preservation of the linguistic dualism of a province like Ontario? It is clear that we certainly have not yet exhausted the legislative options that are there for us. With political will, it would appear to me that there is much more that could be done. Are there serious limits that exist in Ontario given the language preservation, if one interprets that in a fairly positive active sense?

Mr. Roy: It is not easy to answer your question because people keep talking about the backlash or what is politically possible and there has been a long tradition in this province to proceed cautiously in these areas.

Mr. Breaugh: That tradition continues, too.

Mr. Roy: One must say that there has been some major advancement. The acceptance of Bill 8 at least to give some legislative guarantees is going to be extremely important as that proceeds through, and it seems to be. Talking to my friend Gérard Bertrand, who heads the Ontario French Language Services Commission, it is difficult to reverse some of the attitudes within government. It is all very well to say that the law is there, but to get people to accept it, and to have it in practise is something else.

I think that we are making progress in that area. We are making progress in the area of education: the creation of a French-language board. That is a difficult process. There are some constitutional problems there and some financial problems, but where there is a will we seem to be able to find a way to accommodate different groups.

I think, if you are asking me where else can we move, there are areas further not only in primary or secondary education, but we are talking about community colleges which you are very familiar with, Mr. Allen. We are talking about the establishment of a French-language community college starting maybe with Ottawa-Carleton. There is talk about a French-language university. That is something else. Nothing is so important to a minority as education. Those are some of the areas where we can move.

We have made great strides in the courts. I think we are making progress in the area of health and a number of municipalities have made great progress in the area of municipal services. As we move forward, this is what I would



suggest can be done. There is a tradition of proceeding step by step in a process. You have Bill 8. As we move along and have the personnel and as the services are accepted in different areas, the government should not be loath at some point to decide that this is one area where there now should be constitutional guarantees; for instance, in the courts. I do not think there should be a problem there at this particular stage. Maybe the next step is going to be to give constitutional guarantees.

As you move forward step by step, the final step of having official bilingualism will be painless and will hardly be noticed in the province. It will be noticed by some.

Mr. Breaugh: Write that down.

Mr. Roy: There will be groups, and we know what the groups are, that are going to be very vociferous about their objection. Fear and ignorance is our greatest enemy. Once people understand what the process is and that it is not--you always keep hearing, "You always shove French down my throat," or whatever the expression is, or some of the comments made by the present Premier of British Columbia about corn flakes boxes and stuff like that.

I just cannot help but feel that the attitude and atmosphere existing in this country and in this province is so different than what it was 10 years ago or even five years ago. I think we are moving. There has to be a continuous involvement of government from practical application to legislative protection to constitutional protection. I think that can go step by step.

Mr. Allen: I hear you essentially saying that if you take the fact that there is recourse to the courts and some important legal decisions that have been made, and if we agree to incorporate Quebec, providing the "distinct society" guarantees and strengthening that linguistic community in the bounds of Confederation, then given those circumstances, the language of "preservation" can still give us quite a big agenda to work with in terms of promotion and development and it lies within the bounds of Ontario, regardless of Meech Lake or anything else, at some point to proclaim official bilingualism.

I think we would not get much of a ripple, much of an effect, two days after if we did it tomorrow. With those considerations, "preservation" is really language that still is very helpful and very positive for the French community in our province.

Mr. Roy: I suppose the bottom line, when you really get down to it, is that francophones, like every other group, when it gets down to saying, "Where is our protection?" would rather recite it within the Constitution.

Mr. Allen: Of course.

Mr. Roy: If there were some reluctance for political and other reasons on the part of government, then you would go to the courts. In fact, governments sometimes do not mind saying, "We are being forced into it." It often takes the political sting out of some of these initiatives. Governments, including the government of this province, should not be reluctant to move ahead with some of those guarantees within the Constitution.

Mr. McGuinty: I appreciate very much Mr. Roy's comments on the Ontario situation. We owe a great deal to him locally for his fine work in helping to get our French-language school board under way. Indeed, there is



Bill 8, which we are going to implement gradually, in the immediate future. I would like to ask for his comments, however, on another aspect of this which I think has been a recurring concern for a lot of people with whom I have spoken. It has to do with the situation in Quebec as it may unfold.

Mr. Roy stated in passing that the forces of nationalism are not dead: I am wondering if the concerns people have regarding the phrase "distinct society" may not be a factor which would stimulate and indeed justify the continuation of a kind of nationalistic spirit which in the past we have felt could be a threat to Canada as a whole.

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One of our previous presenters used some phrases. We ran out of time before I could ask him to elaborate on them. I thought personally they tended to impute motives somewhat intemperately, but here are the kind of references he alluded to. He said, "What the Quebec government of René Lévesque failed to achieve after its re-election of 1981, the Liberal government of Robert Bourassa was determined to accomplish through political blackmail." Later on, he states, "Bourassa...agreed to the Meech Lake accord because the 'distinct society' clause took precedence over the Charter of Rights and Freedoms."

He goes on to say, "An aggressive and shrewd Quebec government could...according to Morin and Parizeau...disrupt the federal system and move Quebec step by step towards independence." In the same vein, "...a major purpose of the Quebec clause is to bolster the position of the Quebec government in court challenges brought by its linguistic minorities." Finally, along very much the same line and imputing distasteful, but I think not completely unrealistic motives, "By constitutionalizing the Quebec Liberal government's ambitions to create a nationalist state...a state committed to the defence and promotion of the majority nationality, the accord threatens the very fabric of Canada's constitutional evolution since Confederation."

I would like Mr. Roy's comments on that concern that I think are the concern of a lot of people, a concern that the "distinct society" phrase could be taken up and in the future interpreted to justify, condone and promote the kind of nationalism which in the past we have tried to stifle in so far as it would be a danger to Canada.

Mr. Chairman: Mr. McGuinty, just before Mr. Roy answers, can I indicate for the record that I believe those quotations were from Professor Behiels' testimony yesterday.

Mr. McGuinty: Yes, I did not refer to Professor Behiels because he is not here. I did not want to raise these in a critical vein of his otherwise very thoughtful presentation. Thank you, Mr. Chairman.

Mr. Roy: I have heard those comments before, Mr. McGuinty. I really think it is putting far too much emphasis on the so-called "distinct society" clause. First of all, what the clause does is recognize what exists there in fact, a society which is distinct from the rest of the country. It is the only province with a francophone majority. It has fought to keep that status. By recognizing it in the Constitution, it seems to me you are recognizing a fait accompli. We are just saying what is in fact there. I do not see why we should get particularly excited by that proposition if that is one of the concessions we have to make to have Quebec a full partner.

You know how often we have tried that. You will recall Bourassa in 1971.

We thought we had an agreement and at the last minute he got nervous and backed off. It seems to me that having this in the Constitution--I think people are putting an emphasis and a concern far beyond what was ever intended or what the court would interpret from that particular section in the Meech Lake accord.

Besides, you have had a number of constitutional experts, I think including Professor Hogg, who have explained to you that they feel and are convinced that this clause would not override the Charter of Rights and Freedoms. Those are some of your best constitutional experts who are saying that. I think most people would subscribe to the fact that because of where the clause is--at no place is it in the accord that the clause should take precedence over other matters within the agreement of 1982 or some of the other matters within the Meech Lake accord.

With great respect for the professor who made those comments, I really think he sees a sort of nationalistic plot, that Bourassa is sort of Lévesque's successor with just another name, and that this is a whole scheme or just another step in the coffin that is going to blow apart Confederation. I think it is completely the opposite. I think we have succeeded in Meech Lake in finally responding to what Quebec really wants and we have made it a full partner by making certain concessions which I say are really not too much.

I understand the nervousness, for instance, of Pierre Trudeau, our former Prime Minister, about this clause as well, a distinct society. I prefer to subscribe to others, including the Premier (Mr. Peterson), who says, "Basically, what we are recognizing in this clause is what is in fact there." We are saying, "Yes, there is a distinct society there." So what? That does not override some of the major guarantees within the Constitution. I do not agree particularly with those comments. I think most constitutional experts would not either.

M. Morin: Monsieur Roy, une des recommandations qui ont été faites, hier, par l'Association des juristes d'expression française de l'Ontario était la suivante: Au paragraphe 2(1) - qui présentement se lit comme suit: «la reconnaissance de ce que l'existence de Canadiens d'expression française, concentrés au Québec mais présents aussi dans le reste du pays, et de Canadiens d'expression anglaise» - eux, ce qu'ils recommandent, c'est que le paragraphe se lise comme suit: «la reconnaissance de ce que l'existence de Canadiens francophones, concentrés au Québec mais présents en tant que minorité dans le reste du pays», et aussi la même chose s'applique au côté anglophone. Est-ce que je pourrais connaître vos commentaires là-dessus, votre opinion?

Me Roy: Ecoutez, Monsieur Morin, je ne suis pas en désaccord avec ces commentaires-là. Je suis d'accord que, peut-être pour établir certains équilibres entre les garanties qui vont exister à l'intérieur de la province du Québec et celles qui devraient exister pour les minorités à l'extérieur du Québec, il devrait y avoir certains équilibres, et peut-être que les suggestions faites par les juristes d'expression française seraient une bonne façon de clarifier ce point-là. Je crois que les juristes avaient suggéré aussi d'aller peut-être plus loin.

Pour ce qui est de la suggestion qu'avait faite M. Allen, qu'on ne doit pas tout simplement protéger mais promouvoir le fait français à l'extérieur de la province de Québec, même si j'ai une certaine sympathie avec ce que M. Allen a dit, en fait, du côté politique, ce ne serait peut-être presque pas acceptable. Mais c'est un fait que si le Québec s'engage à promouvoir et à

protéger la minorité à l'intérieur du Québec, les provinces anglophones devraient faire la même chose pour leurs minorités au sein de leur propre province. Alors, pour revenir à votre question spécifique, je suis d'accord et je n'ai aucune objection à la recommandation faite par les juristes.

Maintenant, je ne suis pas certain: Est-ce qu'eux, ils suggèrent de ralentir l'accord du lac Meech, de ne pas l'accepter?

M. Morin: Non; au contraire, ils sont tout à fait en faveur.

Me Roy: Ah bon.

M. Morin: Mais ils voudraient tout simplement y apporter certains amendements.

Me Roy: Ils sont d'accord pour accepter l'accord du lac Meech et, comme de raison, que vous fassiez des recommandations, des suggestions pour l'améliorer. Alors, je suis parfaitement d'accord avec cette stratégie-là.

M. Morin: Il y a aussi la question d'authenticité, la question d'interprétation du mot «preserve» vis-à-vis de «protéger». Ils sembleraient y avoir un peu de difficulté à associer les deux mots. Avez-vous une opinion là-dessus?

Me Roy: On en a discuté brièvement avant de commencer et je pense que vous êtes peut-être plus enthousiasmé par le mot--

M. Morin: «Protect».

Me Roy: Oui, «protect», «protéger» plutôt que «préserver». Je pense que je suis d'accord avec vous. Peut-être que le mot «protéger» est plus large, il dénote peut-être quelque chose de plus positif que tout simplement préserver. Vous avez donné l'exemple que quand on préserve quelque chose, on le garde là, on le met--

M. Morin: Il n'y a pas d'espace pour bouger.

Me Roy: Oui, on ne prend aucune initiative, on va juste le protéger dans son état actuel; tandis que si on protège quelque chose, peut-être qu'on est dans une position de le promouvoir, de l'encourager. Souvent, la meilleure forme de protection, c'est de l'encourager, de faire quelque chose de plus positif.

Vous savez, le jeu de mots devient important, surtout sur le plan constitutionnel et surtout par l'interprétation des tribunaux. Alors, ça peut faire une grosse différence.

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M. le Président: Alors, Monsieur Roy, j'aimerais vous remercier d'être venu ce matin et d'avoir partagé avec nous quelques points de vue, surtout sur cette question de langue. Je pense que ça est et ça va continuer d'être très important dans le cadre de nos recommandations. Les points que vous avez soulignés ce matin vont nous aider énormément dans notre rapport. Merci beaucoup.

Me Roy: Merci beaucoup. J'apprécie beaucoup l'occasion que vous m'avez donnée, ainsi que l'intérêt et la participation de tous les membres. J'en suis très reconnaissant.



M. le Président: Merci beaucoup.

Maintenant, j'invite les représentantes d'Action Education Femmes - Ontario et de l'Union culturelle des Franco-Ontariennes à prendre place à la table. Je demanderais à Mme Huguette Léger de présenter les membres des deux organismes. Nous aimerions souhaiter la bienvenue à vous aussi, Madame Léger, ce matin. Aimerez-vous présenter les autres membres de votre groupe? Ensuite, vous pouvez faire votre présentation, et nous continuerons après avec une période de questions.

ACTION EDUCATION FEMMES - ONTARIO  
UNION CULTURELLE DES FRANCO-ONTARIENNES

Mme Léger: Donc, je me présente. Mon nom est Huguette Léger. Je suis la coordonnatrice provinciale de l'Union culturelle des Franco-Ontariennes. Le mémoire sera présenté par Mme Claire Peladeau, membre de l'Union culturelle des Franco-Ontariennes, et Mme Thérèse Martel-Smith, membre d'Action Education Femmes - Ontario. Je peux bien commencer par vous présenter l'organisme. La présentation sera faite tour à tour par Mme Peladeau et Mme Martel-Smith.

Pour commencer, l'Union culturelle des Franco-Ontariennes a été fondée il y a plus de 50 ans, et ses buts sont les suivants: l'amélioration du statut social des femmes et la promotion de la langue et de la culture francophones en Ontario.

Les 3000 membres de l'Union culturelle des Franco-Ontariennes sont regroupés dans plusieurs régions de l'Ontario, soit les régions de Cochrane, Hearst, Kapuskasing, Timmins, Timiskaming, Sudbury, Nipissing, Essex, Prescott et Russell, Glengarry et Stormont. J'aimerais avant tout remercier les membres du Comité spécial de la réforme constitutionnelle de nous avoir permis de vous faire part de nos préoccupations en tant que femmes franco-ontariennes. Alors, je cède maintenant la parole à Mme Peladeau.

Mme Peladeau: Nous, d'Action Education Femmes - Ontario et de l'Union culturelle des Franco-Ontariennes, avons décidé de présenter conjointement un mémoire au Comité spécial de la réforme constitutionnelle puisque nous croyons qu'il est nécessaire que le texte de la constitution soit modifié de façon non ambiguë de manière à faire respecter le droit à l'égalité des femmes et le droit à la reconnaissance juridique des différentes communautés culturelles de langue française qui existent à l'extérieur du Québec. Nous ne voulons plus perpétuer notre situation doublement défavorisée, c'est-à-dire être femme et francophone en Ontario.

Nonobstant notre position, Action Education Femmes - Ontario et l'Union culturelle des Franco-Ontariennes reconnaissent le droit du Québec à revendiquer le statut de société distincte. Etant donné que le gouvernement Peterson semble favoriser un processus de consultation, nous saisissons cette occasion pour sensibiliser le gouvernement et le public aux faiblesses de l'accord. Nous croyons que les articles 1, 7 et 16 de la Modification constitutionnelle de 1987 doivent être modifiés pour refléter davantage la sauvegarde des droits des femmes et des collectivités hors Québec. Bien que M. Peterson ait affirmé que la constitution peut être changée, puisque la formule d'amendement s'applique à la vaste majorité des articles visés dans la réforme constitutionnelle, il donne nettement l'impression d'être réticent à toute modification.

Nous tenons quand même à dire à l'honorable M. Peterson qu'après avoir étudié la Modification constitutionnelle de 1987, nous sommes toujours

convaincues que certains points demeurent ambigus. Nous croyons que les articles qui traitent des dispositions générales (article 16), des programmes cofinancés (article 7) et de l'identité du Canada (article 1) de la Modification constitutionnelle de 1987 ne sont pas complets. Selon nous, l'accord doit être précisé et éclairci pour être acceptable aux femmes et aux collectivités hors Québec.

Dispositions générales, article 16: AEF - Ontario et l'UCFO reconnaissent assurément le caractère distinct de la société québécoise. De plus, nous ne nous objectons pas à la reconnaissance des droits des autochtones et des groupes multiculturels. Par contre, il ne faudrait pas que les droits d'autres groupes de citoyens canadiens et de citoyennes canadiennes soient occultés ou reportés au plan secondaire.

L'article 16 de la Modification constitutionnelle de 1987 comporte actuellement deux dispositions de la Charte et deux dispositions de la constitution qui, selon notre avis et notre compréhension, pourraient mettre des réserves à l'article 1. Les articles 25 et 27, dont il est question dans l'article 16, se retrouvent dans la Charte canadienne des droits et libertés et se rapportent «au maintien des droits et libertés des autochtones, et au maintien du patrimoine culturel», tandis que l'article 35 (Engagement relatif à la participation à une conférence constitutionnelle) et le point 24 de l'article 91 (Autorité législative du Parlement du Canada - les Indiens et les terres réservées aux Indiens) sont des dispositions constitutionnelles.

L'exclusion des articles 15 et 28 de la Charte, lesquels sont relatifs aux droits à l'égalité des deux sexes, pourrait signifier qu'ils ne s'appliquent pas à l'article 1. Nous croyons que l'article 1, en l'occurrence l'article 2 de la constitution, en tant que règle interprétative, pourrait être interprété de façon que la reconnaissance de la société distincte du Québec et la reconnaissance de la majorité d'expression anglaise au Canada soient les faits les plus importants à considérer dans la société canadienne. Est-ce à dire que les droits collectifs sont plus importants que les droits de l'individu?

Si nous nous référons au principe d'interprétation juridique qui stipule que l'expression d'une chose signifie l'exclusion d'une autre, certains droits risquent d'être atteints. Prenons, par exemple, le scénario des garderies bilingues versus les garderies francophones. Le gouvernement pourrait mettre sur pied des garderies bilingues qui, selon lui, protégeraient la caractéristique fondamentale du pays, c'est-à-dire qu'il existe une concentration de Canadiens anglais dans la province et seulement une présence de Canadiens français. Dans ce contexte, les Franco-Ontariennes auraient difficilement recours aux articles des droits à l'égalité des sexes pour avoir accès à des garderies francophones. L'enchâssement de la garantie de l'égalité des sexes dans la Charte canadienne des droits et libertés fut une victoire pour les femmes. Il ne faudrait pas courir le risque de perdre des droits acquis.

Cela remet carrément en question le principe de la protection de l'individu et, en particulier, celle des femmes. La question ne devrait même pas être soulevée. Au risque de paraître simpliste ou répétitive, une constitution devrait, dans ses principes fondamentaux, offrir une formulation claire et précise qui incorpore les droits de l'individu et des collectivités. Si la règle interprétative de l'article 1 doit être conservée, nous souhaitons la voir modifiée, tel que suggéré dans le mémoire de l'Association nationale de la femme et le droit, déposé devant le Comité spécial mixte sur l'accord constitutionnel le 24 juillet 1987, dans lequel on recommandait que soit modifié l'article 16 pour se lire comme suit:

«16(2) L'article 2 de la Loi constitutionnelle de 1987, toute autre disposition de la version modifiée de la Loi constitutionnelle de 1867 ou toute autre loi constitutionnelle, modification ou résolution n'a pas pour effet de porter atteinte aux droits à l'égalité des deux sexes que confèrent les articles 15 et 28 de la Charte canadienne des droits et libertés.»

Mme Thérèse Martel-Smith va continuer la présentation.

Mme Martel-Smith: Bonjour. Permettez-moi de présenter mon groupe avant de commencer. Action Education Femmes - Ontario est un nouvel organisme de femmes francophones qui existe depuis l'hiver 1987. AEF - Ontario regroupe des intervenantes dans le domaine de l'éducation. L'organisme a pour but d'amener les femmes francophones vers une prise de conscience de leurs conditions de vie et une prise en charge de l'amélioration de leur propre condition par le soutien et la promotion de l'éducation sous toutes ses formes. En Ontario, nous travaillons plus spécifiquement à promouvoir l'éducation non sexiste. Enfin, nous faisons partie du réseau national d'Action Education Femmes.

Le droit des provinces de se retirer des programmes à frais partagés, article 7: Les femmes francophones de cette province ont accueilli avec soulagement l'implantation de programmes sociaux. Après la Seconde Guerre mondiale, le gouvernement fédéral s'est engagé progressivement à financer en partie des programmes sociaux pour assurer le bien-être de la population canadienne. Mentionnons ici, entre autres, l'assurance-hospitalisation, l'assurance des soins médicaux et l'exploitation des établissements d'enseignement postsecondaire. Bien entendu, ces politiques sociales ont évolué au fil des ans, et nous voulons qu'elles continuent à assurer un minimum d'égalité de services dans ce pays.

Puisque 80 pour cent de la population franco-ontarienne vit à l'extérieur des grands centres et du Sud-Ouest, elle reçoit des services de moins bonne qualité que la population des grandes villes. Il nous est présentement difficile d'avoir d'excellents services en français. Même à Ottawa, l'Hôpital pour enfants de l'Est de l'Ontario n'offre des services en langue française que depuis peu, et ce à cause de revendications formulées par des organismes francophones. Aujourd'hui encore, les francophones de l'Ontario ont difficilement accès à des services de psychiatrie en français.

Il est donc très connu que les services médicaux spécialisés sont disponibles presque uniquement en anglais et sont offerts presque exclusivement dans les grands centres. Imaginez qu'une province se retire d'un programme national cofinancé, tout en conservant des objectifs compatibles avec ceux du fédéral. Pensez-vous sincèrement qu'elle le fera pour offrir un service de qualité équivalente ou même supérieure aux paramètres du fédéral? Nous doutons de la force de cette condition de retrait.

Nous sommes très inquiètes de la portée éventuelle de l'article 7 de l'accord. Nous savons que l'éducation postsecondaire fait partie des programmes cofinancés. L'éducation des femmes est nécessaire à l'avancement de ces dernières. L'accès aux programmes en langue française dans les institutions collégiales et universitaires est d'autant plus important pour les femmes francophones de la province. Nous savons que la participation des francophones équivaut à la moitié de celle des anglophones en termes proportionnels à leurs populations respectives. L'éducation est une double condition de survie pour nous à la fois comme francophones et comme femmes.



Nous avons toutes les raisons voulues pour nous opposer à l'article 7. Jusqu'à maintenant, les programmes sociaux nous ont plus ou moins bien servis. Nous craignons que, dans l'avenir, les autres programmes qui seront adoptés soient appliqués de façon inéquitable d'une province à l'autre. Pour que nous, les francophones, ayons droit à un minimum de programmes sociaux, nous comprenons très bien l'importance d'obtenir des garanties. Sans cela, nous risquons non seulement de perdre notre «blouse» mais aussi de nous retrouver dans la rue. Pour qu'une province puisse se retirer d'un programme, elle doit souscrire à des objectifs «compatibles» avec ceux du gouvernement canadien. Malheureusement, ce terme n'est pas explicite. Veut-il dire les mêmes critères? Doit-il être interprété dans son sens le plus large? Nul ne peut prévoir ce qu'en serait la règle. Pour que l'accord soit acceptable, il faut remédier à cette incertitude.

Une province peut se prévaloir de cette prérogative dans les cas où elle répond aux conditions établies. Là encore, la question devient litigieuse. Le programme ou la mesure doit être compatible avec les objectifs nationaux. Connaissez-vous la portée de ce terme? Il signifie simplement que le programme ou la mesure provinciale a pour seule obligation que ses objectifs soient compatibles, soient conciliables ou s'accordent avec ceux du fédéral. Combien de fois dans nos conversations avons-nous à préciser que ce que nous disons s'accorde ou est conciliable avec ce que dit notre interlocuteur? Bref, lorsque les termes utilisés ne sont pas les mêmes, ils soulèvent fréquemment des ambiguïtés.

Les objectifs des programmes ou des mesures devraient donc être les mêmes que ceux du fédéral. Nous sommes aussi inquiètes à savoir si cet article s'appliquerait uniquement aux nouveaux programmes établis après l'entrée en vigueur de l'article ou s'il s'appliquerait également aux amendements des programmes existants. Nous sommes donc loin d'être convaincues du bien-fondé de cet article de l'accord. L'incertitude qui en résulte, nous rend mal à l'aise au point de rejeter l'entente. En outre, nous doutons que les amendements aux programmes existants soient admissibles à cet article.

Identité du Canada, article 1: Solidaires de l'Association canadienne-française de l'Ontario, nous n'acceptons pas que notre existence soit remise en question. Nous voulons aller ici au-delà des propos de l'ACFO en affirmant que les Franco-Ontariennes sont très souvent doublement défavorisées. Là où bien souvent la francophonie souffre, les femmes francophones, elles, souffrent doublement. Au moment où les leaders de la collectivité francophone s'évertuent à obtenir des programmes universitaires en français dans les sciences, mettent-ils autant d'énergie à encourager les filles à poursuivre leurs études dans les sciences?

En matière de langue parlée et reconnue au travail, les francophones en sont à leur début, grâce à l'impact de la Loi sur les services en français. Les femmes, quant à elles, en sont au point de départ. C'est-à-dire qu'elles tentent toujours de s'intégrer au marché du travail et d'obtenir l'équité salariale.

En tant qu'organisme franco-ontarien, nous reconnaissons certes l'importance d'intégrer le Québec dans la grande famille canadienne. Nous acquiesçons aussi à la reconnaissance du Québec comme société distincte du Canada. Le Québec a toujours joué un rôle de grande soeur face à la francophonie de l'Ontario. Sans son influence, nous aurions été véritablement noyés dans une mer d'anglophones. La proximité de cette province nous apporte une certaine sécurité. Par contre, l'accord du lac Meech sous-estime les droits des francophones vivant à l'extérieur du Québec. Nous sommes plus que

des Canadiennes d'expression française présentes dans le reste du pays. Nous vivons en collectivité.

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Les femmes francophones sont bien placées pour vous dire ce qu'elles entendent par ces mots. La collaboration, la coopération, le partage et la vie affective sont des critères que l'on attribue habituellement aux femmes. Sans prétendre ne vouloir jurer que par ces caractéristiques, nous pouvons au moins nous en servir, ne serait-ce que cette fois-ci. Voisiner, suivre des cours d'artisanat ou d'informatique, piquer une jasette en allant au bureau de poste ou au centre de d'achats sont autant d'exemples de la vie quotidienne qui témoignent de la vitalité d'une collectivité. Nous pourrions également ajouter à cette liste toutes les activités publiques, telles que: être propriétaire d'une petite entreprise; être candidate en lice aux élections scolaires ou municipales; être présidente de l'Association canadienne-française de l'Ontario, de l'Association française des conseils scolaires de l'Ontario ou d'autres associations professionnelles; être membre actif de l'Union culturelle des Franco-Ontariennes et d'Action Education Femmes de l'Ontario.

Nous n'acceptons pas non plus que les provinces aient pour unique rôle de protéger les francophones hors Québec. Cette expression est, quant à nous, beaucoup trop conservatrice. Elle engage les provinces à assurer un minimum de survie à la francophonie. Or, nous savons fort bien que c'est le voeu de certaines provinces: par exemple, le cas de Léo Piquette en Alberta. En Ontario, la Loi sur les services en français ainsi que la Loi 75 sur la gestion scolaire témoignent de la volonté d'un gouvernement de commencer à véritablement comprendre les besoins de la population. Bien que nous ayons franchi des pas considérables, nous pouvons demander à M. Peterson quand il entend donner un statut officiel au français. Il nous faudra attendre encore longtemps, c'est-à-dire à la fin du XX<sup>e</sup> siècle, selon les paroles retenues par les médias (Le Devoir du 18 février 1988). Rien n'est immuable et rien n'est infiniment garanti.

Nous sommes très inquiètes de l'interprétation de l'article 1, puisque dernièrement, dans les arrêts de la Société acadienne du Nouveau-Brunswick et du Manitoba, la Cour suprême du Canada fut très favorable aux droits des francophones hors Québec. De plus, même si la Charte canadienne des droits et libertés garantit en belles lettres le droit à une éducation dans notre langue, le cas de Penetanguishene n'est pas encore réglé.

Pour ces raisons, l'UCFO et AEF - Ontario demandent au comité de modifier l'article portant sur les droits fondamentaux pour que la Loi constitutionnelle tienne compte des collectivités francophones. Nous maintenons également que le comité doit substituer, au terme «protéger» au paragraphe 2(2), «promouvoir» ou «développer».

Mme Peladeau: En conclusion, nous avons été très déçues du processus dans lequel s'est déroulée la consultation auprès de la population ontarienne et canadienne au sujet de l'accord du lac Meech. Le fédéral s'est hâté de clore la discussion sur cette question, et les organismes de femmes francophones ont eu très peu de temps pour réagir.

En Ontario, nous doutons du bien-fondé du Comité spécial de la réforme constitutionnelle. D'une part, le premier ministre (M. Peterson) s'est déjà prononcé publiquement, affirmant ne rien vouloir modifier de l'accord. D'autre part, le gouvernement semble nettement enthousiasmé à vouloir intégrer le Québec dans la constitution canadienne et veut résolument ratifier l'entente intervenue en juin 1987.



Puisque nous avons des préoccupations majeures quant à l'accord, nous tenions à vous en faire part. Nous savons que d'autres groupes de femmes et des organismes francophones se sont présentés ou se présenteront bientôt devant vous. Cependant, nous venons décrire le caractère particulier des femmes francophones de cette province. Puisque nous représentons deux intérêts, nous avons des préoccupations doubles et nous serons doublement pénalisées par l'accord du lac Meech tel que rédigé présentement.

Nous, les femmes, n'acceptons pas que nos droits à l'égalité soient relégués derrière d'autres principes fondamentaux. Pour nous, cette garantie est tout aussi fondamentale que la dualité canadienne. Nous n'acceptons pas non plus que les provinces se retirent des programmes cofinancés, tel que stipulé dans l'accord du lac Meech. Finalement, nous n'acceptons pas l'entente si elle ne reconnaît pas de bonne foi la réalité francophone à l'extérieur du Québec.

Pour terminer, un simple message: Nous ne serons d'accord qu'avec un meilleur accord.

M. le Président: Merci beaucoup. Vous avez certainement soulevé plusieurs questions et plusieurs aspects de l'accord.

Je me demande si je pourrais poser la première question, surtout sur cette question de langue et de culture. En effet, c'est une question politique puisque sans doute, à un moment donné, il y avait autour de la table plusieurs premiers ministres, peut-être même la majorité, qui disaient: «Écoutez, nous en Ontario, au Québec, au Nouveau-Brunswick, au Manitoba, dans les autres provinces de l'Est, nous pouvons certainement accepter de protéger et de promouvoir». Je ne sais pas, mais disons que l'Alberta et la Colombie britannique disaient: «Écoutez, pour nous, même protéger, ça, c'est quelque chose de vraiment nouveau et nous n'allons pas plus loin que ça en ce moment».

Alors là, comme politicien, j'ai un problème, j'ai une question: Est-ce qu'il vaudrait mieux accepter au moins quelque chose qu'on pense être un pas en avant, peut-être même deux pas en avant, et essayer plus tard de faire adopter ce terme «promouvoir»? Cela n'empêche pas du tout le Nouveau-Brunswick, l'Ontario ou le Manitoba de faire des changements à la législation sur les langues, que ce soit dans le domaine de l'éducation, dans celui de la santé ou quoi que ce soit.

En faisant des recommandations, en faisant des amendements, nous devons nous demander aussi: Quel en sera l'impact sur le Québec? Est-ce que ce sera le seul moyen d'arriver au but que nous voulons atteindre? Jusqu'à quel point faut-il, en effet, arrêter le processus du lac Meech, ou chercher d'autres moyens d'effectuer les changements que vous aimeriez voir en ce qui concerne la langue? Pour nous, il ne s'agit pas simplement de dire: «Bon, voici les aspects de l'accord Meech que nous n'aimons pas». Nous devons aussi faire des recommandations pour améliorer l'accord, pour changer l'accord. Mais il y a aussi cette autre réalité, à savoir que le Québec, en ce moment, pense qu'on va accepter l'accord du lac Meech; donc, le rejeter aurait un autre impact possible.

Pouvez-vous nous aider dans cette question de savoir où aller? Probablement qu'en Ontario on aimerait protéger et promouvoir, mais j'ai l'impression que ce n'étaient ni l'Ontario, ni le Québec, ni le Manitoba, ni le Nouveau-Brunswick qui ont rejeté ces mots, mais plutôt l'Alberta et la Colombie britannique, et ça ne changerait pas demain, même si nous disions: «Écoutez, il ne faut pas accepter l'accord Meech sans qu'on y insère, demain matin, ce mot». Y a-t-il d'autres moyens de le faire?



Je ne suis pas sûr si vous êtes au courant du mémoire des juristes d'hier. Ils ont proposé un changement pour plus tard. Pouvez-vous nous aider? Pour nous, ça pose des problèmes.

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Mme Peladeau: Bien, je n'ai pas connaissance du mémoire des juristes à l'heure actuelle, mais pour nous, les femmes francophones, je pense qu'il est très important d'avoir des services en français. Et puis à ce moment-ci, nous désirons fortement que le mot «promouvoir» ou «développer» soit inclus dans les amendements proposés. Je pense que tous les jours nous vivons des situations comme femmes et c'est un point sur lequel nous ne voulons pas faire de concession, vraiment.

Si je pense à la province de Québec, où les anglophones sont extrêmement bien protégés, je ne peux pas voir pourquoi, même en Alberta ou en Colombie britannique, s'il n'y a que onze personnes qui désirent une école française - comme c'est le cas au Québec où, cette semaine, on mentionnait dans les médias que onze élèves anglophones ont leur école bien à eux, avec tous les services possibles et imaginables; c'est dans le comté de Vaudreuil-Soulanges, si je me souviens bien - alors moi, je pense que même si on vit en Colombie britannique, ou en Saskatchewan, ou en Alberta, on a le droit aux mêmes privilèges, aux mêmes services.

Alors, j'insiste fortement pour que ces mots-là soient inclus dans les amendements. Peut-être aussi qu'il conviendrait que plusieurs personnes s'assoient ensemble. Comme je vous l'ai mentionné, je n'ai pas pris connaissance du mémoire des juristes. Peut-être qu'ils ont une solution à laquelle nous pourrions adhérer, mais à ce moment-ci, je n'en ai pas connaissance.

M. le Président: Bon. Je comprends ce que vous dites et je suis complètement d'accord que les francophones, soit en Colombie britannique, soit en Ontario ou au Nouveau-Brunswick, devraient avoir les mêmes droits. Cela, je le comprends, je suis complètement d'accord.

Mais le problème ne se pose pas comme ça. A mon sens, ça donnerait quelque chose aux minorités hors Québec si le Québec était à l'intérieur du Canada vraiment de bon gré. J'ai la forte impression que peu importe ce que nous disons en ce moment, le point de vue de M. Vander Zalm ne changera pas. En ce moment, il n'accepte pas le mot «promouvoir».

Donc, je veux bien vous comprendre. Est-ce que c'est le point de vue des Franco-Ontariennes que ce comité devrait rejeter l'accord si on n'y ajoute pas, par amendement, le mot «promouvoir»? Cela pourrait avoir pour effet qu'on n'aura pas d'accord et qu'on n'aura pas de protection ni même de préservation. La question que je vous pose, c'est vraiment une question politique: Si l'accord nous donne au moins quelque chose, nous pourrions travailler sur les autres aspects lors de la prochaine série de discussions. Il est clair qu'il y a une sorte d'équilibre, et c'est sur ça que je cherche à savoir votre point de vue.

Mme Peladeau: Actuellement, le mot «présence» dit: «Nous nous refusons parce que nous avons l'appui des femmes franco-ontariennes, des groupes de femmes». Je pense que le simple fait d'être identifié par une présence de francophones... «Présence» n'est pas vraiment un terme positif pour nous. Alors, nous insistons pour avoir un terme, peut-être autre que «promouvoir» ou «développer» mais aussi positif que ceux-là. Est-ce que ma compagne veut ajouter quelque chose?

Mme Léger: Avant d'intervenir, je m'excuse mais au début quand j'ai fait les présentations, j'ai oublié de présenter Jacinthe Guindon, la présidente de AEF - Ontario. Je crois que je ne l'avais pas vue, c'est peut-être l'endroit où elle était assise, mais je m'en excuse et je la présente.

Lorsque vous vous servez de l'exemple de l'Alberta et de la Colombie britannique, il est vrai que ça pourrait peut-être poser un problème lorsqu'il s'agit de promouvoir les communautés francophones hors Québec plutôt que de protéger des gens ou de conserver des acquis. C'est une question de sémantique mais c'est une question très importante, et je crois qu'il faut quand même maintenir la position que l'accord, selon nous, ne peut vraiment pas être accepté sans des modifications. Il n'est pas question de rejeter l'accord dans ses grands principes, mais il y a certaines choses qui sont extrêmement importantes.

Pour être un peu pragmatique et simpliste dans mes comparaisons, si je mets ma maison en vente, moi, je demande peut-être 125 000 \$ mais j'espère recevoir 100 000 \$. Si on demande de promouvoir, même si le terme «promouvoir» est inclus, peut-être qu'à la longue on va finir par avoir une préservation ou ça va être conservé, au minimum. Alors, je ne reculerais pas derrière une question de mots, puisque, en fait, je ne veux pas être cynique et dire que c'est juste une question de jeu de mots, mais on sais combien le mot peut être puissant.

Alors, je propose que oui, comme la minorité anglophone au Québec, dont la culture est promue au Québec et c'est bien explicite, la même chose doit s'appliquer aux communautés francophones à l'extérieur du Québec si on veut vraiment, à la longue, la promouvoir, cette caractéristique fondamentale du pays.

M. le Président: Bon. En terminant, si nous avons une autre copie du mémoire des juristes, nous pourrions vous en remettre copie, puisque là, au lieu de «Canadiens d'expression française», ils parlent de «francophones» et de «minorités». Donc, il y a là un aspect de la collectivité qui n'existe peut-être pas dans le texte. Mais si nous en avons une autre copie, nous vous la donnerons.

M. Morin: Ma question, en réalité, est une question complémentaire à la vôtre.

Interjection.

M. Morin: Je ne le fais pas avec mauvaise intention.

Dans votre texte vous dites tout simplement: «Nous maintenons également que le comité doit substituer, au terme "protéger" au paragraphe 2(2), "promouvoir" ou "développer"». L'entente, telle quelle est écrite présentement, dit tout simplement que le Parlement et les législatures ont le rôle de protéger, tandis qu'au Québec, et la Législature et le gouvernement du Québec sont chargés de la promotion autant que de la protection.

Oui, il semblerait y avoir une espèce d'ambiguïté, une espèce de confusion. C'est l'interprétation du mot «preserve», à mon point de vue. En français, c'est beaucoup plus fort. «Protéger», ça veut dire prendre toutes les mesures nécessaires pour être capable de donner tous les droits à ce groupe-là, et donner aussi un peu de liberté d'action; tandis qu'en anglais, on dit «preserve». «Preserve», à mon point de vue, veut dire «emboîter, mettre en conserve».



Mme Peladeau: Oui.

M. Morin: Cela reste là, ça ne bouge pas. C'est peut-être pour ça que quand est venu le temps - je n'étais pas là - les négociations ont eu lieu entre les provinces, et la Colombie britannique et l'Alberta ont dit: «We like the word "preserve". It is not as strong as "protect". It does not mean "promotion". It does not mean "promoting"».

A mon de vue, ce que M. le Président voulait dire, c'est qu'il y a certainement eu un progrès, un très grand progrès. C'est que ça n'existait pas auparavant. On a réussi à réunir tout le monde; des négociations ont été faites. On s'entend sur le fait que le Québec se joint à nous, quitte à apporter plus tard des amendements, à en discuter; et, à mesure que les gens comprendront bien ce que veut dire «preserve» ou peut-être un mot différent, là on pourra ajouter «protection» et «promotion». Est-ce que vous êtes d'accord avec ça? C'est difficile.

1100

Mme Martel-Smith: Ce que nous voyons à ce moment-ci, c'est que le gouvernement de l'Ontario, notre gouvernement, devrait continuer à négocier, et il devrait peut-être faire comprendre ce terme-là avant que l'accord du lac Meech soit signé ou complété. On a le droit de négocier encore. On peut demander au gouvernement fédéral de rouvrir les négociations. Lorsque les négociations ont été entreprises, ça a été fait très rapidement, en très peu de temps. Donc, ce serait peut-être le temps de lui demander de rouvrir les négociations.

M. Morin: Sans briser l'entente.

Mme Martel-Smith: Sans briser l'entente, c'est ça: y apporter des amendements.

Mme Léger: Juste pour ajouter à ça, il faut aussi tenir compte du fait que, pour une question de mots, est-ce que ça vaut vraiment... est-ce que ça peut aussi nous amener à des débats de sémantique justement qui peuvent s'éterniser et qui peuvent aller au-delà? Il me semble que ce serait beaucoup plus facile et beaucoup plus convenable, à la longue, pour tous d'avoir déjà dans la constitution des termes qui sont clairs et précis et non ambigus de part et d'autre. «Préserver» et tout ça là, quand on y revient, ça veut peut-être dire pouvoir prendre des mesures; mais prendre des mesures, ça veut dire quoi?

«Promouvoir», en français comme en anglais, est très explicite. Que fait-on pour promouvoir? On fait des actions positives, et qu'on le prenne en français ou en anglais, le mot lui-même est beaucoup plus fort que «protéger». Alors, en ce sens-là, je dois insister sur le mot.

Mr. Harris: Thank you. I hope you do not mind if I speak in English. There are two areas that I want to pursue. I want to follow up with this "protect" and "promote" as well.

You are the second group that has said you want the same as the English-language minority in Quebec, where the government there is to promote. I do not read this that way. There is nothing here that says the government of Quebec is to promote the right of the English-language minority in Quebec. When it says "protect and promote" it refers only to, first, the distinct society. That is how I read it. That is what Quebec is to promote. It is the distinct society of Quebec.



Then, when it comes to deal with the word "protect," where you want to put in "promote," that, as I understand it, deals with paragraph 2(1)(a). That is all of Canada, recognizing that there is an English-speaking minority in Quebec and a French-speaking minority outside of Quebec. The minority is being protected by both sides, as I understand it.

I am not sure. I do not know why we read so much into Mr. Vander Zalm, whether anybody knows if he has objected or not, but my sense is that Quebec would not agree either. My sense is that Quebec would not agree to promote the English-language minority in Quebec entrenched in the Constitution. To me, what you are saying is that you want to scrap this whole deal because you want "promote" in both sections.

I understand what you are saying except, to me, I think this is a great step forward to have all the provinces of Canada, including Quebec, agree to protect--the definition that is used in paragraph 2(1)(a) of duality, if you like.

I think if the word "promote" were not in there for Quebec, probably nobody would be asking for it, but I do not think it is applying to the same situation. I wonder if you have any comments.

Mme Martel-Smith: Présentement, ce n'est pas assez fort pour les francophones hors Québec et c'est pour ça que nous demandons le changement.

Mr. Harris: OK, I will not pursue it, but I have heard your group say, "We want the same as the English-language minority has in Quebec. I do not see anything in Meech Lake that gives them something that is not given outside. That, to me, is being treated the same. The promotion part is not to promote the English-language minority, it is to promote, in fact, the French-language majority. That is what is different. That is what is distinct."

I want to ask you something else as well. We have spent a lot of time arguing about this promotion and all of these clauses that deal with the distinct society. Many constitutional people who have come before us have said that if we accept something else that you want--in other words, in your case, for women's rights, you want the charter to be supreme; everybody wants the charter to be supreme--then many are saying, "Then you can forget these clauses; they do not mean anything anyway." These clauses are there to help the courts interpret occasions when the individual rights will be overridden for the sake of the distinct society or for the sake of whatever.

If I understand what the experts are telling me, and I am not an expert nor a lawyer, if we accept your argument for charter supremacy, you might as well throw "distinct society" out; it does not mean anything anyway, because you are directing the courts that even though it is there, you cannot consider it when it comes to interpreting any individual rights. Have you given any thought to that?

Mme Léger: Mais je crois qu'on a clairement indiqué dans notre mémoire que les droits des collectivités sont aussi importants que les droits de l'individu et qu'il faut essayer de reconnaître les deux droits. Je pense que c'est la raison pour laquelle on a présenté le mémoire de telle façon, si ça peut répondre à votre question.

Mr. Harris: As I understand the way this is placed in the Constitution, it is an interpretive clause. Right now the rights of the individual, and the equality rights, if you like, are very much supreme over

these interpretive clauses. What I think you are suggesting is to give a total supremacy of all the individual rights. Then that will eliminate these clauses and there is no point of their being there.

Mme Léger: Je n'ai peut-être pas compris la question. Pouvez-vous la répéter?

Mr. Harris: In your response to me you said you wanted them to be equal, the rights of the individual and the collective rights. So you want the rights of the distinct society to be equal with equality rights?

Mme Léger: Je crois que dans le mémoire on demande qu'ils soient inclus. Alors, si vous voulez interpréter ça comme une façon de dire que les droits de l'individu sont égaux à ceux de la collectivité, oui; mais ce qu'on demande, c'est que ces droits soient inclus, qu'ils ne soient pas exclus de la modification.

Mr. Harris: I understand what you are saying. I think what you are asking us to do is to exclude totally these rights as they would deal with women's or with equality rights; these will not pertain. In other words, anything to do with the distinct society will not pertain to women's rights. Maybe I am wrong, but that is the way I understand it.

Mme Léger: Je crois qu'il y a un problème de communication, puisque ce n'est pas ce que l'on suggère.

Mr. Chairman: Before going to Mr. Offer, let me say that in my example of talking about British Columbia and Alberta, I do not know. Mr. Harris may be quite right and I perhaps might have said province A or province B. The reason I used those two by way of example was that, historically, they have perhaps been somewhat more reticent about accepting French language rights; but there were others who were involved at the table.

1110

Mr. Offer: Thank you very much for your presentation. My question has two parts to it. Of course, most of the discussion here has centred on the whole question of preserving and promoting and should it be included. It is your position that without the insertion of the word "promotion," this agreement ought to be rejected. That is, as I see it, a fair statement of your position.

My concern is that we cannot just look at this concern, which you have rightly brought forward, without also bringing into play your concern with respect to the process that has been in existence to this point in time. My question is, first--and it is more of a comment on your part, and I think the chairman started off this line of questioning--the mere fact that there is now a role to be played by not only the province of Quebec, not only the federal government, but all provincial legislatures in dealing with preserving a fundamental characteristic of Canada. I would like to get a comment from you that this is in fact a step in the right direction.

Second, if there were a process that emanated from all these hearings that are going to take place across this country whereby your concerns as you have brought them forth today could be inputted, could be acted upon, would that change your position with respect to rejecting the accord now? In other words, if a process were in place after acceptance and after the passage of the accord which said, "Yes, we are now going to deal with some of the



concerns which have been brought forward and we will talk about the concerns you have brought forward today"--well, only one of them, actually, because you have brought forward others, such as the amendment to insert the word "promotion"--would that not allay your concerns so that you would rather say: "Well, yes, because we now have a process whereby we can make some direct input, we are ready to say yes, this section can go forward with its shortcomings," in your opinion, because it is, first, a step in the right direction, and second, we have a process, so we can continue to take steps in the right direction.

I would just like to hear your feeling whether, if that were the case, your position with respect to rejection of the accord might be somewhat diminished.

Mme Léger: La seule inquiétude devant tout ça serait de déterminer le procédé. Quel serait le procédé, quelles seraient les implications du procédé? Est-ce que vous suggérez, si j'ai bien compris, que l'accord puisse être accepté et qu'on puisse continuer à négocier des changements pour rendre les termes de l'accord plus précis? Ce sont mes questions par rapport à votre question. Il n'est pas tellement clair dans mon esprit que, à la longue, on puisse obtenir des termes dans l'accord qui soient plus clairs. Alors, ce sont les problèmes que j'ai.

C'est une bonne suggestion. On ne nie pas le fait que ce sont des pas dans la bonne direction, mais je ne vois pas pourquoi on ne pourrait pas prendre de grands pas qui pourraient nous amener au but plutôt que de s'attarder sur des procédés et des négociations. Pouvez-vous m'expliquer un peu plus ce que vous entendez par le procédé et à quel moment ce procédé aurait lieu? Cela, je ne l'ai pas compris.

Mr. Offer: Certainly we have heard concerns from other individuals and from other groups with respect to a part of the accord, but having put all that aside, having put aside your concerns with respect to the insertion of promotion, having put aside your concern with respect to the implication of the shared-cost programs in section 7, which you brought forward, there seems to be a general concern that there has not been a process for you to bring forward your concerns prior to this being signed, so to speak.

I am not going to suggest a process for you to accept or reject. Rather, I would like to hear from you, because you have brought it forward, how you see a process which would provide the framework for you to bring forward your concerns. If that process were in existence, would your position vis-à-vis rejection of the accord, rejection of this initial step, then be somewhat diminished?

Mme Peladeau: Avant de parler du processus que l'on pourrait entreprendre pour reformuler ou éclaircir l'accord, je voudrais attirer votre attention sur un fait. Dans l'histoire des femmes, nous avons appris à ne pas faire confiance à ceux qui veulent prendre soin de nous. Je pense que nous sommes certaines d'être bien servies seulement si nous prenons l'initiative d'un mouvement. Alors, en ce qui a trait ici aux expressions que nous trouvons très ambiguës, je pense qu'il y aurait une possibilité que les femmes se concertent et aident à les définir. Mais nous n'avons pas les budgets, nous n'avons pas les possibilités à ce moment-ci. L'accord du lac Meech doit être entériné, je crois, en 1990 ou 1991, si je ne m'abuse.

Mr. Chairman: Yes.



Mme Peladeau: Oui? Alors, les gouvernements ont les budgets, ont la possibilité d'ouvrir une nouvelle ronde de négociations pour que ces termes qui nous sont actuellement inacceptables soient définis, éclairés et que l'on puisse les accepter.

Mme Léger: Ce que je peux ajouter aussi, c'est que sans vouloir offusquer personne ici, si j'ai bien compris, on a été invitées pour intervenir et pour vous dire sur quels points nous n'étions pas d'accord dans la modification. Loin de vous dire comment faire votre travail, nous sommes quand même toujours d'accord pour continuer le procédé. Mais de là à dire qu'on va mettre de côté ce qui nous concerne, les revendications qu'on a apportées aujourd'hui, pour faire passer l'accord et puis y revenir plus tard, je ne crois pas qu'on puisse accepter ce genre de procédé.

On vous dit clairement et précisément ce qu'on voit qui va à l'encontre de la promotion des communautés francophones et ce qui va à l'encontre de la protection des droits déjà acquis des femmes, et je pense qu'à ce moment-ci c'est à peu près la seule chose qu'on puisse vous donner. De là à commencer à vous dire comment le faire, moi, je pense que ça revient carrément dans l'autre cour. A la prochaine ronde, oui, sans pour autant qu'on exclue rien pour procéder à autre chose. J'espère que ça répond assez clairement à votre question.

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M. le Président: Nous avons besoin d'aide de temps en temps, c'est difficile.

Il y a des questions de la part de M. Allen et de M. Daigeler. Le temps passe et nous avons un autre témoin.

M. Allen: Je m'excuse si je prolonge cette séance pour vous un peu, mais je suis tout à fait sympathique avec le point de vue de base de votre mémoire: en particulier, vos références à la situation doublement défavorisée des Franco-Ontariennes, même triplement et quadruplement défavorisée, en ce sens que les Franco-Ontariens sont une minorité, les femmes font partie de cette minorité, mais aussi la plupart habitent une région marginale et certaines familles sont membres de classes marginales: les ouvriers dans les mines, dans les forêts du Nord de l'Ontario, etc. Je pense qu'il est très important, de ce point de vue, de souligner les besoins de ces groupes défavorisés et de ne pas s'attendre avec trop d'optimisme que les hommes politiques de notre pays poursuivent les buts propres aux Franco-Ontariennes.

En même temps, je suis très pessimiste quant à la possibilité de résoudre cette question de «préservation» et de «promotion» des groupes au Québec et hors Québec. Ne serait-ce pas plus facile de souligner en ce moment, dans la politique ontarienne, l'obtention d'un statut officiel pour la langue française en Ontario? En ce moment, au moins deux partis à la Législature ont déclaré leur appui de cette proposition; même le premier ministre a suggéré que peut-être, dans un avenir un peu éloigné, ça pourrait se produire.

Peut-être qu'il est important, en ce moment, que ce comité souligne que c'est le moment d'atteindre ces buts. De votre point de vue, n'est-il pas possible de réaliser tous vos objectifs en Ontario, qu'il y ait ou non amendement de l'accord du lac Meech, par l'obtention d'un statut officiel pour la langue française en Ontario?

Mme Peladeau: Ce serait sûrement une très bonne façon d'avoir des services en français si la législation provinciale donnait un statut officiel à la langue française en Ontario. Mais nous pensons aussi aux francophones des autres provinces, qui probablement se sentiraient délaissés, tout comme nous avons eu cette impression-là lorsque le Québec a reçu le statut de société distincte. Vous savez, les droits sont tellement minimes - je parle en général de tous les francophones hors Québec - que, à ce moment-ci, on parle non seulement pour nous, les francophones de l'Ontario, mais aussi pour les francophones du reste du pays.

Mme Léger: Il faut prendre en considération aussi le fait qu'une constitution, c'est un document de base qui est très puissant. Les lois, là, ça se fait, puis ça se refait, puis ça se défait, puis ça disparaît; mais une constitution, si je comprends bien, d'après mes éléments de science politique, c'est quelque chose qui reste et qui est très fort.

Oui, c'est vrai, ce sont des pas dans la bonne direction, la Loi 8. Mais il ne faut pas se leurrer non plus sur la Loi 8. Les services viennent, mais ils ne viennent pas vite. Puis on peut prévoir peut-être la même chose pour le statut des langues officielles en Ontario. Ce n'est pas encore fait, ce n'est pas un fait. Je crois qu'il est toujours très important de s'assurer que certains droits et certains acquis sont dans les documents de base dans le pays.

M. Allen: Je reconnais cette position et, comme je l'ai dit, je suis sympathique avec ça.

J'ai une autre question. Vous avez dit, en conclusion: «Nous, les femmes, n'acceptons pas que nos droits à l'égalité soient relégués derrière d'autres principes fondamentaux». Je reviens aux questions de M. Harris, mais je ne suis pas d'accord avec lui sur la notion de la priorité de la Charte des droits et libertés, qui effacera les propositions de la société distincte, etc. Je pense qu'il est possible d'harmoniser la Charte des droits et libertés et la société distincte, ce n'est pas un conflit pour moi, en particulier quand on souligne que dans la Charte des droits et libertés elle-même, on insiste, à l'article 15, sur l'action affirmative à l'intention des groupes et des individus défavorisés. Donc, il est possible d'avoir un régime qui mette l'accent sur l'égalité, d'un côté, et sur l'action pour les dévaforisés de l'autre côté; donc, l'harmonisation des deux documents.

Mais, comme nous l'ont dit les experts constitutionnels, et peut-être vous est-il possible de penser encore un peu à ce point, même si on souligne ou redéclare la priorité de la Charte des droits et libertés, cette Charte est toujours présente pour toutes les autres articles de la constitution. Donc, même si une phrase à l'égard des articles 25 ou 27 sur les autochtones ou les groupes multiculturels, au point de vue des articles interprétatifs pour ces groupes, a été inscrite dans l'accord du lac Meech, bien sûr, la Charte des droits et libertés est fortement présente pour tous les articles de l'accord du lac Meech, comme pour tous les articles de la constitution. Donc, peut-être qu'il n'est pas nécessaire d'insister sur la nécessité d'une autre déclaration de la position de la Charte du point de vue de son impact sur l'accord du lac Meech et les autres questions. Avez-vous des commentaires sur cette suggestion?

Mme Peladeau: Je ne sais pas si j'ai bien compris, mais je pense qu'on parle de l'article 16, dans lequel on dit: «L'article 2 de la Loi constitutionnelle de 1867 n'a pas pour effet de porter atteinte aux articles 25 ou 27..., à l'article 35...ou au point 24...». Mais pourquoi avoir précisé ces articles-là? Pourquoi ne pas avoir dit qu'il n'affectait tout simplement

pas les autres articles? Pourquoi les avoir mentionnés? Quand on stipule ou on précise que tel ou tel article ne sera pas touché, est-ce que ça pourrait vouloir dire que les autres seront affectés par ça?

Alors moi, je pense qu'il y aurait lieu de reformuler cette disposition générale qui dirait que ça ne porte pas atteinte aux autres articles de la Charte canadienne des droits et libertés, tout simplement.

Mme Léger: C'était justement mon intervention. C'était une question à votre question. Si la Charte prime autant que les autres, alors pourquoi avoir insisté sur d'autres articles qui relèvent de la Charte et de la constitution? Je ne suis pas juriste, mais ça me cause des inquiétudes quand même.

M. Allen: Oui, je suis toujours d'avis que ??les articles 25 et 27 sont des articles interprétatifs. Mais l'article 28 est un article qui a donné des droits substantiels et il n'est pas possible de les rendre plus fortement par l'insertion de cet article dans l'accord du lac Meech. Donc, les articles existent à des niveaux différents ??dans le cadre de leur force constitutionnelle et juridique.

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Je pense que dans le comité, l'opinion générale est qu'il vaudrait mieux ne pas y avoir inséré l'article 16, que ça complique la situation. Mais cette insertion a été faite pour des raisons politiques, non pas pour des raisons juridiques, et je pense donc qu'il y a une raison politique d'insérer l'article 28 aussi. Mais de mon point de vue, et, je pense, de celui des experts constitutionnels, il n'améliore pas la situation des femmes pour ??achever cette addition dans l'article 16 de l'accord. Mais c'est seulement une question, et je pense qu'il est important pour nous tous de penser davantage aux conséquences de cette question.

M. Daigeler: J'ai une question très brève. Avez-vous déjà discuté de vos positions et de votre questionnement avec des groupes de femmes venant du Québec? Sinon, avez-vous l'intention de le faire dans un avenir rapproché?

Mme Léger: Discuter, avant de présenter notre mémoire?

M. Daigeler: Oui, avez-vous eu un échange d'opinions avec vos consoeurs du Québec, puisqu'elles ont une autre position.

Mme Léger: Oui, nous connaissons la position des femmes du Québec. Pour répondre directement à votre question, nous n'en avons pas discuté mais nous sommes au courant de la position des femmes du Québec. Pour ce qui est de l'avenir, je ne pourrais pas vous dire s'il y aura des négociations, des rencontres.

M. Daigeler: Personnellement, je souhaiterais ça très fortement. Il me semble qu'il y a vraiment une absence de ces dialogues-là. Je vous laisse simplement l'idée qu'il me semble qu'il est important que vous partagiez vous-mêmes, soit au moyen de lettres ou, encore mieux, dans des rencontres, vos positions aussi avec des groupes de femmes du Québec.

Mme Martel-Smith: Naturellement, nous parlons avec des groupes de femmes du Québec, mais nous ne vivons pas les mêmes situations que les femmes du Québec. Les Franco-Ontariennes ne vivent pas du tout dans la même situation.



M. le Président: Voici une intervention encore plus brève de M. Villeneuve.

M. Villeneuve: Très brève, Monsieur le Président. Vous avez mentionné la situation de l'école à Penetanguishene. Croyez-vous que l'accord du lac Meech pourrait solutionner le problème? Ou, d'après vous, est-ce que ça créerait des situations encore plus nombreuses que ce que nous avons vu à Penetanguishene, où le gouvernement de la province a fait appel de la décision du juge Sirois à deux reprises?

Mme Martel-Smith: Je dirais, à ce moment-ci, que ça devrait tout simplement aider, ça ne devrait pas nuire. Mais pour entrer dans une discussion, pour élaborer davantage, je pense que je devrais m'arrêter là. Cela devrait aider et non pas nuire.

M. Villeneuve: Cela devrait aider, même dans son contexte actuel, ou avec les améliorations que vous avez suggérées? Vous aimeriez voir les améliorations pour essayer d'éviter la situation qui existe justement. Alors, c'est une des raisons pour lesquelles vous avez mentionné la situation.

Mme Martel-Smith: Oui.

M. le Président: Alors, merci beaucoup. Au nom du comité, j'aimerais vous remercier infiniment pour votre mémoire et aussi pour vos réponses à nos questions. Pour nous, c'est une sorte de voyage que nous entreprenons avec l'accord du lac Meech pour essayer de savoir quelles devraient être nos recommandations et où aller avec cet accord. Alors, nous vous souhaitons bonne chance et nous vous remercions pour vos suggestions.

Maintenant, j'appelle Mme Monique Riese. Je m'excuse, nous avons pris un peu plus de temps que prévu, mais nous allons certainement vous donner le temps nécessaire pour présenter vos points de vue, et nous allons prendre le temps aussi de vous poser des questions. Alors, je vous demanderais de faire votre présentation. Je pense que tout le monde en a copie maintenant. Quand la lumière rouge s'allume, ça veut dire que ça marche. Alors, si vous voulez commencer, nous allons poser des questions par la suite.

#### MONIQUE RIESE

Mme Riese: Je voudrais commencer par vous remercier de me donner l'occasion de vous exprimer la grande inquiétude que j'éprouve à l'égard de l'accord constitutionnel de 1987. Je suis Canadienne française, née et élevée dans la province de Québec. Je suis une personne au foyer qui demeure maintenant à Nepean.

I do not represent anybody else, but I may well be representative of a large number of men and women who feel uneasy about the accord or, indeed, who are opposed to it and who, for one reason or another, hesitate to speak out.

I was reluctant to appear before you, but I love Canada and I love Quebec, and although we must allow for evolutionary changes, there is a real danger that the accord may start the gradual dismantling of the Canada we know.

That Quebec is different nobody will deny, but can you proceed to ratify the accord before Canadians have been told what the long-term effect of the "distinct society" and opting-out clauses may be?

On November 25, 1987, the Attorney General, the Honourable Ian Scott, told the Legislature:

"The 1982 Constitution failed to make good on the promise we had made in the referendum that there would be adequate protection for the distinct identity of Quebec. When we promised that, those words caused no difficulty."

My recollection of the promise made during the referendum is better reflected on page 308 of René Lévesque's memoirs, where he quotes some of the "no" advocates in the referendum debate as follows:

"... 'We, MPs from Quebec, ask Québécois to vote Non, and at the same time we warn Canadians in other provinces that this Non should not be interpreted as proof that all is well here, or that there are no changes to be made. On the contrary, it is with the aim of getting things changed that we are putting our seats on the line.'"

"Change, OK. But what change? That remained a mystery...."

"Every chance we had to speak in public over the next days we demanded specifics. In vain."

Many people remember the promise as "a no would not be a vote for the status quo but a vote for renewed federalism," whatever that was supposed to mean.

We are also told that the new section of the accord is an interpretative clause. But is it really only interpretative? There is no doubt about subsection 2(1): "The Constitution of Canada shall be interpreted in a manner consistent with (a) and (b)." But what about subsection 2(3), which reads: "The role of the Legislature and government of Quebec to preserve and promote the distinct identity of Quebec referred to in paragraph 1(b) is affirmed?"

I do not recall having been given any hint of what some of the ramifications of this subsection might be from any of our leaders, except the Premier of Quebec.

On November 25, 1987, the Attorney General also stated in the Legislature with regard to section 2:

"This section does not confer any power whatever. It is an interpretative provision which will be used by the courts where other constitutional provisions are unclear or ambiguous...."

The opinion that "this section does not confer any power whatever" does not appear to be shared by the Premier of Quebec, who is a lawyer and signatory to the accord; and a number of constitutionalists admit clearly to the possibility of the redistribution of powers by the courts, as does the report of the joint committee of the Senate and the House of Commons, which I deal with later.

On June 18, 1987, Mr. Bourassa, a strong supporter of the accord, made the following statements in the National Assembly. This is an unofficial translation of excerpts from pages 8707 and 8708 of the Quebec Hansard:

"Mr. Bourassa: Mr. Chairman, I am taking the liberty, contrary to my practice, as you know, to use written notes because of the interpretation that may be given by the courts. According to jurisprudence, the statements, the intentions of the contracting party may be useful. Therefore, I will try, in this respect, to be as precise and concise as possible...."

He went on:

"The French language constitutes one fundamental characteristic of this uniqueness, but the latter includes other aspects such as culture and political, economic and legal institutions. As we have said on numerous occasions, we did not want to define precisely to avoid diminishing the role of the National Assembly to promote this uniqueness. It should be noted that this Quebec uniqueness will be protected and promoted by the National Assembly and the government, while the duality will be preserved by the legislators.

"It must be emphasized that the whole Constitution, including the charter, will be interpreted and applied in the light of this 'distinct society' section. The exercise of our legislative powers is intended, and this will allow us to consolidate our vested rights and gain new ground."

On May 28, 1987, on CBC's Morningside, the Right Honourable Pierre Trudeau quoted Mr. Bourassa as having "been saying...this [the accord] strengthens our hand in international affairs."

This view is also held by Robert Décary, who is reported by the Honourable Donald Johnston to have told the Quebec National Assembly committee on the accord, "The role of the Quebec government as such will definitely add strength to Quebec's position, including in international affairs." This was taken from the minutes of the joint committee, August 5, 1987.

Mr. Décary, described as "among the most eminent constitutionalists in the country" by Senator Lowell Murray, also appeared before the joint committee to support the accord and participated in the following exchange on August 6, 1987:

"Mr. Ouellet: A member of Parliament who is not a member of this committee...implied that you think that under the accord, Quebec is obtaining powers that go far beyond those contained in the present Canadian Constitution. Do you really believe that if the accord is agreed to, Quebec will henceforth have powers in the fields of transportation and communications and that, in fact, through the acknowledgement of a distinct character, Quebec will eventually be able to achieve de facto separation?

"Mr. Décary: It must be borne in mind that this concept is a rule of interpretation, at the outset. It is a rule of interpretation that will have to be applied to the division of powers within the federal state of Canada. Under it, certain powers could be assigned to the provinces, by virtue of the fact that Quebec, as a province, is a distinct society. The division of powers could, in case of doubt, be decided by the Supreme Court. Because it is possible that this dimension of power relates to the concept of a distinct society in Quebec, the court could decide that a power lies within provincial jurisdiction. Thus this power would fall within the purview of all the provinces, and not only within that of Quebec.

"This is how I interpret the accord."

It will be noted that Mr. Décary did not directly answer Mr. Ouellet's question as to whether he believed Quebec will have powers in the fields of transportation and communications and ignored the question regarding the possibility of Quebec's separation. However, he does admit unequivocally the possibility of the redistribution of powers as a consequence of the "distinct society" provision and that in case of doubt the Supreme Court would decide. Should we not be disturbed by Mr. Décary's suggestion that not only may Quebec gain considerable powers, but should the court decide that certain powers lie within the Quebec provincial jurisdiction because of its "distinct society,"



the court may therefore also decide that those powers lie within the provincial jurisdiction?

Gérald-A. Beaudoin, who, as members of the committee are probably aware, has had a distinguished legal career and, among other things, pleaded for different governments before the Supreme Court of Canada in constitutional law cases, appeared before the joint committee. Mr. Beaudoin's written brief, appended to the joint committee minutes of August 4, 1987, reads:

"...the distinct society declaration... It is an explicit rule of interpretation, admittedly an important one, but a rule which does not materially alter the division of powers or the Charter of Rights. It can, however, like any rule, tip the scales to one side or the other in certain cases, in particular under section 1 of the charter or in a grey area of the division of powers."

Former Senator Eugene Forsey, widely recognized as a constitutional expert, who initially supported the accord, said before the joint committee on August 4, 1987:

"The possibilities are infinite. I do not know how to limit them. You undoubtedly have the possibility of a very aggressive provincial government of any stripe in Quebec saying they are going to push this thing as hard as they can."

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In connection with this statement, it is interesting to note that in 1974, under the Liberal government of Mr. Bourassa, the Quebec Public Service Board of the Department of Communications tried to extend its powers by authorizing companies to establish and operate cable distribution undertakings in specific areas. The Quebec Court of Appeal unanimously set aside the decisions of the board and declared them ultra vires in so far as they applied to the cable distribution undertakings of Dionne and d'Auteuil, the Communications Department Act, the Public Service Board Act and the cable distribution regulations.

The Supreme Court of Canada, in a majority decision, held that, "Exclusive legislative authority in relation to the regulation of cablevision stations and their programming, at least where such programming involved the interception of television signals and their retransmission to cablevision subscribers, rested in the Parliament of Canada." This was taken from the Supreme Court record, 1978, page 191.

Paragraphs 63 and 64 on page 44 of the joint committee report, under the heading "Distribution of Powers," read as follows:

"63. It has been held repeatedly by the courts that the Constitution Act, 1867, exhaustively divides the entirety of legislative competence between Canada and the provinces. It might therefore appear difficult to see how the 'linguistic duality/distinct society' clauses could affect the division of powers without derogating from the powers, rights or privileges of one level of government in favour of the other.

"64. Nevertheless, the joint committee was advised that the definition of the scope of a legislative power is an ongoing process of allocating subject matters to heads of jurisdiction. Take, for instance, the regulation of markets for financial securities. Would such a law be classified as an

aspect of the federal 'trade and commerce' power, as some say, or of 'property and civil rights' within exclusive provincial jurisdiction, as others contend? And what about a new law purporting to regulate the content of radio or television broadcasting? As new laws are made and challenged before the courts, this process of classification of laws into federal or provincial jurisdiction continues. The court docket is limited only by the imagination and productivity of Canada's legislators and lawyers. The ongoing process of the constitutional 'classification' of laws by the courts is one of the important areas where the interpretative provisions of the 'linguistic duality' and 'distinct society' clauses will come into play. Indeed, if this were not so, then the 'linguistic duality' and 'distinct society' interpretative provision would be meaningless, a result that can hardly have been intended by its framers."

If the term "classification of laws" used in the context of the quoted paragraph 64 is synonymous with redistribution of powers, as it appears to be, what is the meaning of subsection 2(4), which reads, "Nothing in this section derogates from the powers, rights or privileges of Parliament or the government of Canada, or of the legislatures or governments of the provinces, including any powers, rights or privileges relating to language"?

In effect, the joint committee report states that the interpretative provision of the "distinct society" is meaningful and that the classification of laws, which appears to be tantamount to a redistribution of powers, will be decided by the Supreme Court of Canada. Should our country be moulded by an appointed judicial body, even the highest in the land, rather than through the normal democratic process?

Clearly, there are considerable differences between the opinions expressed by different constitutional experts, as shown earlier. This is also reflected in the report of the joint committee. Notwithstanding that, ordinary Canadian citizens are expected to be reassured by such statements as, "There is great virtue in ambiguity," or "It is only an interpretative clause," and to be content to let the Supreme Court sort it all out eventually.

With regard to opting out with compensation, which René Lévesque considered to be the most crucial of his demands, according to his memoirs, page 332, he writes in the same memoirs, on page 325:

"...for Quebec, which in all likelihood would have to use it more often than the others, the exercise of the opting-out provision should be made as easy as possible. This way, I speculated, might we not, little by little, be able to build the associate state we had been refused?"

How many Canadians, indeed how many Québécois who voted "Non" in the referendum, realize that the opting-out clause in the accord will allow the evolution of an associate state, and little by little may bring René Lévesque's dream to fulfilment? The "distinct society" clause will help this process along, and more than that, through effective redistribution of powers, may produce not only one associate state but a federation of associated states.

In conclusion, may I pose the following questions? If you believe in a strong, united Canada, are you not disturbed by the possibility of the accord creating a federation of associated states? No matter where you stand vis-à-vis the accord, are you not also disturbed by the fact that Canadians not only are not consulted as to whether they would favour a fundamentally different Canada, but are not even told about the possibility of its emergence?

I respectfully submit the committee recommend that:

(a) The Legislature postpone the ratification of the accord until:

(i) first ministers have convened once again at a public conference to respond to the questions that have been raised before your committee; and

(ii) the federal government has referred section 1, enacting the proposed section 2 of the Constitution Amendment, 1987, to the Supreme Court for interpretation; and

(b) The Legislature be given a free vote on the accord resolution.

If I may add, the proposal to reconvene the first ministers was put forward by Dr. A. W. Johnson, professor of political science at the University of Toronto and a former Deputy Minister of National Health and Welfare, before the joint committee on August 21, 1987.

The proposal for referral to the Supreme Court was made by the Honourable Donald Johnston to the British Columbia-Yukon joint Canadian Bar Association meeting on February 6, 1987.

All of which is respectfully submitted.

Mr. Chairman: Thank you very much for a very clear and thoughtful presentation in which you have brought together a number of points, some of which we have had brought before the committee. Certainly in going over some of the testimony before the joint committee, you have brought forward some issues that we have not specifically addressed. I think that is most helpful.

M. Allen: On dirait qu'il y avait une espèce de mascarade dans votre description de vous-même, au deuxième paragraphe, comme «homemaker». On dirait plutôt que nous avons affaire ici à un expert constitutionnel «in disguise».

Ms. Riese: I just feel strongly about it.

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M. Allen: Votre mémoire est vraiment si clair et net, vous avez précisé la question de la division des pouvoirs dans la constitution et son impact sur la société et vous avez donné l'interprétation de cet article avec une telle délicatesse et une telle finesse que je suis très impressionné par cela.

Even with the refinement you have brought to the committee around that whole question, the notion that while there would not be any direct and dramatic movement of one heading or another under section 91 or section 92 under the interpretative force of the "distinct society" clauses, the course of interpretation in areas of shared jurisdiction or where jurisdiction is obscure would none the less over time have a significant impact on the division of powers and, in particular, the powers of the province of Quebec--I personally think something of that kind would happen, and to that extent, I agree with you--is it fair to press that argument to the point where one projects an entire redistribution of Canadian power so that one ends up with what I think you referred to at one point as a series of associate states, rather than what would remain essentially still a unified Dominion with spending powers and with powers under "peace, order and good government" and all the headings under section 91 which appertain to the federal power?



Ms. Riese: If Mr. Lévesque considered that the opting-out section made as easy as possible that he could achieve an associate state, does it not follow that the rest will have the opting-out clauses too? If Quebec can become an associate state, cannot the other ones do so as well? Do we not risk to have a checkerboard Canada, everybody going without one? If it is within the provincial field, they can opt out and get the money. If they go into a shared-cost program or initiative, what does it mean? Again, they can almost go home with the money and very little else. We are going to end up with a checkerboard Canada.

Those are my views. Obviously, not everybody is in agreement.

Mr. Allen: Others have certainly projected that possibility, but does the wording that is in the Meech Lake accord not essentially reflect the practice of the Trudeau government and of the shared-cost programming that prevailed in those years? There is nothing in principle that seems to be very different, apart from the fact that, on the one hand, the federal power has been strengthened by making it clear that the government can spend money in areas of exclusive provincial jurisdiction. There is a clarification that has never existed in the Constitution before, but at the same time, since it is an area of exclusive jurisdiction, the province naturally--one would have to concede that--may have to have the right to opt out.

Still, the Meech Lake accord proposes that that government, even though it is within its jurisdiction, would have to construct something which presumably at the present moment it does not have to do, although the force of spending power and the money being there and not having it makes a difference, but now it does say that something will have to happen as a result of the federal government moving into that exclusive provincial jurisdiction. I get a sense that that is essentially what was going on in the politics of the Trudeau era.

Ms. Riese: Yes, I think it was, but I hear they are going to make it almost a law. Before that, at least there were some powers that the federal government had kept. As it is now, they seem to make it open--at least, this is my interpretation--that the province could get some money by doing a minimum of a program. What does the word "initiative" mean? That they are thinking about it and they get the money?

Mr. Allen: Obviously, they would have to do more than think about it. They would have to do something.

Ms. Riese: I am exaggerating, naturally.

Mr. Allen: Yes. I must say that I do not want to press the questioning on the issue, but I think what I appreciate most in your paper is the way in which you have underlined for us the way in which the course of interpretation in areas of disputed jurisdiction, shared cost and shared jurisdiction could drift in a certain direction. I think that is a refinement we have not often had in the briefs that have come before us on that point. They have often been rather gross assertions that a power would move or that there would be clear transfers of jurisdiction, etc. I appreciate that very much.

Ms. Riese: Thank you.

Mr. Chairman: Can I just follow up perhaps one aspect of that question, and maybe from the devil's advocate position that you were setting

out? In effect, in that section we are talking about exclusive areas of provincial jurisdiction, not exclusive areas set out by Meech Lake, not exclusive areas set out by the 1982 constitutional changes, but those set out in 1867.

Could one not argue that it makes very great sense that there should be some clearly spelled out provision, if one level is going to be moving into another level's area of exclusive jurisdiction, that there needs to be some framework or parameter; that over the last 20 or more years it is not just Quebec but, really, at every constitutional or series of constitutional discussions that we have had the question of the federal spending power, shared-cost programs and opting out have all been there and have been raised, sometimes vociferously and even more strongly by other provinces than Quebec?

When it is suggested that having section 106A inserted into the Constitution is somehow taking away from the strength of the national government, could one not also argue, first, that it sets out for the first time a right of the federal government in fact to move into areas of provincial jurisdictions and, second, that it clarifies how that might proceed and that, in effect, it might be a good thing?

Ms. Riese: I think by making it like that, opting out, you can do it. Otherwise, before that, if you wanted to opt out, you were going to give me something else. Now there is nothing else. They go away with the opting-out clause and the money. Before that, they would have had to make a concession.

Mr. Chairman: I understand that.

Ms. Riese: Am I interpreting your question correctly?

Mr. Chairman: You are. I am pushing it, if you like, to the other limit. In 1867 there was a division of powers and those were set out. Courts interpreted what some of those meant as we have evolved through the century, but none the less we have arrived at a position where, for example, education is provincial. Some people feel it ought not to be, but that is where we are at.

It seems to me that one could argue, in terms of a system of effective and healthy federalism in this country, that the federal government should not be able willy-nilly to go in and spend money in that area and put a province at a disadvantage by saying, "We are going to do this anyway whether you like it or not." What this does is, in effect, protect more clearly in part of the clause the province's right to some form of reasonable compensation. One could view that as a healthy sign because it admits, on the one hand, that the federal government may now, as a right under the Constitution which it did not have before, develop a program, set national objectives and move into an area of exclusive provincial jurisdiction. On the other hand, it says that where that happens, the province may receive reasonable compensation where it has a program that is compatible with those objectives.

I understand your argument and I think it is a valid one, but it seems to me that there is also another side of that coin which speaks to the nature of our federal state, not just in terms of Quebec but in terms of other provinces.

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Ms. Riese: I think you are right. That is a point of view, but as Canadians, I think we have been functioning quite well. I visualize a checkerboard Canada from now on and that we will be weakened by it. This is the way I view it.

Mr. Chairman: Thank you.

Miss Roberts: Thank you for your fine presentation. As Mr. Allen said, it was much better than most likely I could do and having some background in the law.

Ms. Riese: You have not been working at it for a whole month.

Miss Roberts: I think we have been here for a couple of years, or it just seems that way.

What I would like to do is draw to your attention your last page, page 9. You have been very specific about the recommendations. If indeed the first ministers got together again and said: "Here is what we meant. The Meech Lake accord is like this and answers all the questions, but it is going to go through. We are not going to change a word of it." That would still upset you, would it not?

Ms. Riese: Right. I think at least if they came and said, "This is the Meech Lake accord; this is what we did and this is what we expect," and gave us some idea of what some of the ramifications are, then it is their prerogative to sign this, obviously. There is nothing too much we can do. We can talk. At least they should tell us. Do you not think they should tell Canadians what some of the ramifications will be?

Miss Roberts: My question to you is that you still would not like the accord. You would accept it. Your problem is maybe in the process that occurs in getting to the accord. If they had been more open instead of being behind closed doors, whatever their negotiations were, and they came to this agreement, you would still be prepared to say, "I do not like it, but they were open about it and I could accept it."

Ms. Riese: No, I do not think I reject it because they did the whole thing in a marathon session. I reject it by studying it. Whether open or closed, I do not think it changes what is in the text of the Constitution. If they told me why they have done it, it might frustrate me the other way, but as it is now, I have to guess. I have to go to the committee reports and I have to read different things and come to my own conclusions, which may be wrong.

Miss Roberts: The second part of my question deals with your second recommendation, which is to refer section 1 to the Supreme Court for interpretation. I assume that is the term "distinct society."

Ms. Riese: Correct, yes, what the implications of that are.

Miss Roberts: Have you thought about what it would be? What would you say to the Supreme Court? What does "distinct society" mean in the Constitution?



Ms. Riese: I am sorry. Whatever the federal government does when it refers a question or, in conjunction with the provinces, they could work out a number of questions, which is what they did in the Constitution in 1980, I think.

Miss Roberts: We have specific laws to deal with this. If you are going to think of "distinct society," you might ask a question, I assume with respect to a particular law or a particular question, and you would have to be very particular about that. I do not know how you could get a general answer from the Supreme Court saying, "'Distinct society' will mean this and this." They always say "and including something else we could think of later on."

Ms. Riese: But even at this stage, when you hear Mr. Bourassa talk about all the things he has gained in law and all the things he is going to do in law, it seems, to me anyway, that Bourassa reads an awful lot of power into this. Everybody else says: "Oh, no. There is nothing." Ian Scott said that no powers whatsoever are gained. There is so much confusion and uncertainty. Would it not be wise to ask the Supreme Court how it would interpret that?

Miss Roberts: I do not mean to belabour this, but if you look at the charter itself, it can be very well written like, "A person may not be detained." The Supreme Court has had many, many, many actions already before it and has made many decisions on what that means. No matter how often you do it, we are always going to have to go back and say, "In this particular situation, does this occur?"

All I am trying to do is get from you your understanding of the situation. What you are basically saying, if I am right, is: "I want some more clarification. I would like clarification, whether it is through the first ministers or through the court. Clarification would make me feel better about the wording." Is that appropriate?

Ms. Riese: Yes, that is one thing. Another is that ambiguities in laws may occur eventually, but should they be built in from the beginning? This is our Constitution and laws are going to be made based on that. If this is obviously faulty, what is in store for us?

Miss Roberts: Thank you very much for your comments.

Mr. Harris: I thought it was an excellent presentation and I do not disagree with your recommendations.

Ms. Riese: Thank you.

Mr. Harris: I am not so sure I disagree with the conclusions you have drawn as to what could possibly happen to Canada. I want to ask you two things, though. One is that the opting out does not bother me nearly so much as it appears to bother you. You tie the opting out with "distinct society." That concerns me a little more. If the province of Quebec is able to opt out, if you like, on the basis of "distinct society" or to challenge existing rights or federal powers that are there on that basis, that would concern me more than the opting-out right of provinces in what really are areas of provincial jurisdiction. In isolation it does not bother me, but when you tie it together with "distinct society," maybe it takes on a new meaning, if that is the interpretation of that section.

Ms. Riese: If you read Mr. Bourassa's interpretation of the accord, he seems to be saying that he is gaining an awful lot.

Mr. Harris: Let me ask you this: Let us say the scenario you have laid out for us is possible under a Constitution amended by Meech Lake. It strikes me that if you wanted to separate from Canada, there would be easier ways to do it than the long and very calculating process you would have to go through using the Constitution to work your way out. I am not saying that what you are saying here is not perhaps potentially possible if all the interpretations go the way you have said them, and it concerns me. Yet I say to myself that there has to be an easier way to get out of Canada than this way, than coldly, calculatingly challenging over a period of 10 or 20 years, doing everything that would have to be done to work your way out. Do I make any sense?

Ms. Riese: Yes, I think you do, but to me, I think this is the best way out because they would have everything in place. Gradually, they would have their laws. They would work everything. They would get a lot of money from the federal government in the meantime, and when the time comes that they have their own laws always giving this slant of the distinct society, then perhaps the will of the people will have been eroded. What is the difference? What is left? We have our own laws. We have everything.

Mr. Harris: In order to do it, using the Constitution to do it, there would have to be a cold-hearted will on behalf of the government of Quebec to say: "We are taking you out of Confederation as it now exists. Here is how we are going to do it. We are not telling you we are doing it, but there has to be a cold, calculated plan of action to do that."

Ms. Riese: Yes.

Mr. Harris: Do you believe that is there?

Ms. Riese: It is not far. To me, it is.

Mr. Harris: I am not questioning--I am very concerned when I am asking you that.

Ms. Riese: Maybe not with Mr. Bourassa, but do not forget Jacques Parizeau is coming on the horizon now. He said he was going to grab all the powers he could under the Meech Lake accord. If he is talking about all the powers he can grab under this accord, it is because they exist; it is not because they are nonexistent. How can he be talking about powers he is going to grab if there are none to be grabbed?

Mr. Harris: Thank you for a very thought-provoking presentation.

Mr. Chairman: On that one thought, we are asking, what might Parizeau do with Meech Lake? We are also being told by many thoughtful Quebecers what may happen if we do not do this. There is almost a catch-22 here. I suppose that ultimately what we have to do is look at the accord and the various points of view that have been brought to us and try to find some commonsense balance, if we can, in that we are not "experts." But it becomes very difficult, because on the one hand you say, "If we do this, will it lead to certain things, and if we don't do it, will that also lead to certain things?" Of course, there is no answer that we or really anybody can give to that; it just makes the task more difficult, I suppose.

On behalf of the committee, I want to thank you very much for joining us today. We always find that when we think maybe we are starting to understand a certain part, somebody comes forward and raises yet another series of

questions that we have to sit down and think through carefully. We are indebted to you for a very thoughtful presentation. Thank you for coming today. Again, I apologize for the length of time you had to sit, but I hope you found it interesting as well.

Ms. Riese: Yes, it was very interesting.

Mr. Chairman: Before closing off, I am going to move us in camera because the clerk has a few administrative announcements to make. Following that, we will be having a lunch served here. We thought it might be simpler to do it that way. I will now move the meeting in camera.

The committee continued in camera at 12:23 p.m.



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SELECT COMMITTEE ON CONSTITUTIONAL REFORM

1987 CONSTITUTIONAL ACCORD

TUESDAY, MARCH 22, 1988

Afternoon Sitting

Draft Transcript

SELECT COMMITTEE ON CONSTITUTIONAL REFORM

CHAIRMAN: Beer, Charles (York North L)  
VICE-CHAIRMAN: Roberts, Marietta L. D. (Elgin L)  
Allen, Richard (Hamilton West NDP)  
Breaugh, Michael J. (Oshawa NDP)  
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Eves, Ernie L. (Parry Sound PC)  
Fawcett, Joan M. (Northumberland L)  
Harris, Michael D. (Nipissing PC)  
Morin, Gilles E. (Carleton East L)  
Offer, Steven (Mississauga North L)

Substitutions:

McGuinty, Dalton J. (Ottawa South L) for Mr. Elliot  
Villeneuve, Noble (Stormont, Dundas and Glengarry PC) for Mr. Eves

Clerk: Deller, Deborah

Staff:

Bedford, David, Research Officer, Legislative Research Service

Witnesses:

Individual Presentation:

Geraets, Dr. Theodore, Professor of Philosophy, University of Ottawa

From the Township of South Crosby:

Warren, Donald M., Deputy Reeve

From the Public Interest Advocacy Centre:

Bell, Glen W., Associate General Counsel

From the Native Council of Canada:

Bruyere, Louis (Smokey), President

McCormick, Christopher, Vice-President

Groves, Robert, Special Adviser

Individual Presentation:

Simeon, Dr. Richard, Director, School of Public Administration, Queen's  
University

AFTERNOON SITTING

The committee resumed at 2:03 p.m. in Algonquin Salon A, Delta Ottawa Hotel.

Mr. Chairman: Good afternoon, ladies and gentleman. We can begin this afternoon's session. I would like to call Professor Theodore F. Geraets, a professor of philosophy from the University of Ottawa. We are pleased to have you with us this afternoon. We have a copy of your paper. If you would like to open this afternoon with comments on your paper or proceed however you would like to, then we will follow that up with questions.

## THEODORE F. GERAETS

Dr. Geraets: I want to thank the honourable members for giving me the opportunity to explain orally what I have transmitted to you in writing already, quite a while ago. I hope you have been able to read it. I see you have just received a second copy of it. I do not intend, given the relatively short time we have, to read through the whole document, but I think it warrants careful reading. I have shown it to a few people. It is entirely my own, but, for instance, Eugene Forsey had the opportunity a while ago to read it and declares himself in full agreement with it.

My main argument, of course, is that the present system of constitution-making which is sometimes called "executive federalism"--for instance, this term is used in the report of the special joint committee--is really a bad system to make a Constitution. I do not think I have to repeat anything on the first six pages of my brief.

I want, however, to stress a little more explicitly two points that I alluded to but did not develop in the brief. The first point is that in this system called "executive federalism," we have 11 elected representatives who decide for all practical purposes what our Constitution is going to look like. We know, as even the special joint committee recognizes, that with party discipline back home, it is not too difficult in general for a Premier to have his Legislature approve what he has signed at first ministers' meetings.

We should be well aware that 10 out of those 11 men who take those decisions have been specifically elected to look after the particular interests of their particular provinces. I do not think I exaggerate when I use the term "conflict of interest" here. We hear a lot about that, but we should ask ourselves whether we have not enshrined in the present process of constitution-making something that looks quite a bit like conflict of interest.

The second point I want to make is about the temporary and contingent character of the provincial legislatures and the premiers. We presently have the case of Manitoba, for instance. If the one New Democrat who voted against the government had not voted against the government, Premier Pawley would still be speaking for Manitoba.

The Globe and Mail wrote not so long ago, "It is depressing to think that Manitoba's stand on such matters"--meaning the Constitution and meaning also free trade--"will be shaped by the timing of a disgruntled back-bencher." What this underlines is that it just does not make sense to have the government of the day decide the Constitution of a country.



One of the major issues in Manitoba, of course, is going to be the increase of premiums for auto insurance. That is typical of the type of thing that may sway the population of a province in the election of its next Premier, who then if he has a comfortable majority is going to participate in the first ministers' meetings and decide together with the others on the Constitution of the country.

This is certainly not, as you know very well, the only system possible. Look at Australia, which is within the British tradition. As you know, the politicians argue and negotiate a proposal, but then the proposal does go to the population and an overall majority in the whole country is required, as well as qualified majorities, meaning, in Australia, a majority in the majority of states.

We have a formula and I am not at this stage ready to put into question the formula, as such, although I do not think it is a good amending formula. I do not put it into question, initially at least, as far as the relevant weight of the provinces is concerned. What I argue, however, is that instead of giving the final say to these 11 people, 10 of whom were elected to look after the particular interests of their provinces, it is the population of the whole of Canada, the people of Canada and, according to whatever formula there would be, the population of the provinces that would have the final say.

In fact, I want to draw your attention to a very important principle and I would be so happy if, frankly, elected politicians were to accept this principle explicitly in their report. The principle is the following: To be elected does not mean to receive a blank cheque. In other words, what can be done legally by a government may lack legitimacy.

The report of the special joint committee recognizes this when it says on page 134, talking about the proposed standing joint committee of the Senate and the House of Commons on the Constitution, "Such a committee would orchestrate a level of public involvement in the constitutional process that is vitally necessary"--they do not mince their words--"to confer legitimacy on constitutional change."

What I maintain is that such a committee is not enough and that, like in Australia, it is the people of Canada who should have the final say.

That, as I said, is the main principle and I would be very happy and I think Canadians would respect you for this--I have been talking in the same way to the Senate, but I could not say this to the Senate because they are not elected. You are elected and I think it would make a very great impression on the Canadian people if this committee, composed of elected representatives, would recognize that there are limits to what they legitimately can do.

1410

The main question you have, as the Senate has it--I made essentially the same presentation some time ago to the Senate--is, is the proposed strategy of which I start talking on page 8 of the document a realistic one? I am somewhat an odd man out here, I think, because most people you hear are here to defend specific interests, of women, very legitimately, of francophones outside Quebec and so on. What I am trying to defend is that the Canadian people should have the full exercise of their democratic rights where the nature of the country is at stake.

As far as the strategy I propose is concerned, it is a bold one, and I recognize that. It is a very unusual for a provincial Legislature to take the initiative of proposing a resolution for constitutional change. However, you are very well aware that you do have this right. The Senate has the same right. You do have this right. I am somewhat hopeful that I will have the opportunity of making essentially the same presentation when there will be hearings elsewhere in the country. I do not know whether in Manitoba, if there will be hearings, or in New Brunswick they will allow people from outside, but I will try to make the same points I am making here. Although what I propose is a bold initiative, especially if it comes only from one Legislature, I have a feeling you might very well not be alone if you went for this course of action.

I do not want to go through the whole flow chart, so to speak. I propose several points spaced out in time. I want to concentrate on the main point, which is the first one, and maybe say a very few words about the second one. The first one is exactly what I was talking about, the transfer of the final say about constitutional change from the first ministers to the people of Canada and the people of the provinces. I do not think anybody can see in this an attack on Quebec, which is one of the preoccupations when you start talking about the Meech Lake accord.

In fact, it is very interesting to see what the Quebec Minister responsible for Canadian Intergovernmental Affairs of Quebec wrote in 1983 in la Loi constitutionnelle de 1982. I would recommend that you read especially his introduction to this issue, which is of March 1984. Gil Rémillard writes there about the constitution of 1982. I think there is simultaneous translation; I will read it in French: «Il est difficile de comprendre comment un pays démocratique comme le Canada a pu amender aussi substantiellement sa constitution sans cette consultation.» What he means by "consultation," of course, is asking the people to ratify whatever was being proposed. It is possible that in Quebec there would be less opposition than elsewhere to the move I am proposing to you. In fact, you may recall that in November 1981 there was at one time, a very short time, an Ottawa-Quebec axis when Prime Minister Trudeau proposed that they would negotiate a little further, but if they could not agree, they would go to the people.

In the same issue, Rémillard gives an overview of what happened at the time; this is on page 91. The other quote I gave was on page 10. Rémillard writes here: «Cependant, dans le contexte de cette conférence de la dernière chance, cette idée de référendum provoque la colère des premiers ministres anglophones, qui rejettent toute idée de référendum, considérant qu'ils ont le mandat de gouverner et que le peuple ne se préoccupe pas de ces questions.»

This, of course, is the main argument against what I am proposing, but I think that if you have read my brief and listened to the remarks I made at the beginning, it becomes quite clear that they do have a mandate, but I do not think they have a blank cheque.

Is what I am proposing an attack on the first ministers? It would be a significant reduction in the exorbitant powers that they have now, but it is not an attack. They would always continue to play a key role in the preparation, obviously, of any proposed change, but they would not have a final say. That is, I think, how things ought to be. If a proposed change had to be ratified by the Canadian people, politicians would have to listen to the people so that their proposals would have a chance to pass. What I propose in number one is a transfer of the final say, but I do not speak at all about the relative weight of the provinces. That could remain exactly the same.

Number two, I propose that together with such a binding referendum on the transfer of the final say, we could find out whether a majority of Canadians do or do not agree with the proposed amending formula in the Meech Lake accord. That would be a possibility. It would cost hardly any more money to do this and it would be very interesting to see what the majority of Canadians think. As I say in my text, until this is done, nobody, but really nobody knows what Canadians want.

There are two visions of Canada. I talk about that briefly in my text. Sometimes they are exaggerated on both sides and it is easy to reject something that is exaggerated, but we know that Canada is already the most decentralized federal state. With issues like abortion now, for instance, I think many people have become aware that maybe we are going too far in the direction of decentralization.

I am aware that it is a federal state and it should remain a federal state. However, I think it is only fair to give Canadians a final say about this choice between two different, not exaggerated visions of Canada.

One last point on this: What sort of majority should be required if the Canadian people were asked in a binding referendum whether they should have the final say or whether the first ministers should continue to have, for all practical purposes, a final say? As I wrote in my text, I think only a simple majority is required because there is no question of transfer from the provinces to the federal government or more provinces or fewer provinces that would be needed to have a change. It only drives home that a Premier does not, on all issues, especially on those very important, vital issues, speak for his province. I think the premiers should be fair enough to recognize that.

The last point: This brings home the paradoxical situation in which we are. The main difficulty for such very reasonable change by which we would adapt more or less our system to the Australian one--it is not to go somewhere on the moon or just a dream--is that it would require the approval, not only of the Legislature of Ontario but also of Parliament, of the House, of the Senate and of all the other legislatures. The Canadian people, in order to have the full exercise of their democratic rights, have to receive the approval of their own elected representatives. I hope you do feel that there is a paradox in that.

1420

Now you can say: "What chance is there? With all those legislatures, unanimity is so difficult to obtain. Provincial premiers will get angry." Yes, they may get a little upset, but for any politician to come out squarely against such an eminently democratic move is also a difficult thing to do. In any case--and that is my last word right now--it is worth trying. Courage is required because it is something unusual and maybe it would be possible to put out some feelers as to what the feeling would be in other quarters, in other legislatures for instance, but I do think that this committee and hopefully later the Legislature of Ontario, if it makes this move, would earn the gratitude of the people of Canada.

Mr. Chairman: One of the issues we have increasingly, I think, felt we have to wrestle with is the whole question of process. Certainly, your paper addresses that very specifically and puts forward a very interesting concept in terms of where we ought to go. I think it is very useful in that respect because it does focus very clearly on what is one way of obtaining that consent.



Mr. Breough: I think you have hit on one of our difficulties and that is, how do we stop this kind of executive federalism getting even further entrenched than it is and put in place some other kind of a process which makes more sense to us. I think we share a great deal of the concern that you have put forward in your paper.

I want to explore a couple of areas with you that disturb me a little bit. First, I would argue that what we have at work here is a parliamentary system malfunctioning, not functioning the way a parliament should. When the premiers roll out to Meech Lake and sign a deal and then go back home and say, "But this deal is in stone and no amendments can be even considered," that is a bastardization of the parliamentary system that I know. That is some other kind of system. That is a totalitarian state. That is a dictator laying down the law. That is not a parliament at work.

So that is my first problem, to somehow work into this process what I would call a more legitimate role of the parliament, all of them. It seems to me that if they did that across the country we would do a great deal of service. For example, if every one of our legislatures was required to go through a long, painful, public hearing process like this one, that is what we are here for. It is not just an entertainment piece for the members but it is a vehicle for the public to put their views forward and the members, I think, have an obligation to respond in whatever way they can to legitimate concerns that have been raised.

I would like to kind of stop there and see if you feel that kind of making the parliamentary system work would resolve much in the way of the problems that you have raised.

Dr. Geraets: You are quite right. What we have now is a really excessive situation and that, in fact, is why I dare to make this kind of proposal. Of course, if it had been done differently, as you know, if the standing joint committee proposed this, that would be a very significant improvement. Still, it would not do away entirely with the essential point that I have been making.

I still think the government of the day is too contingent, so to speak, and even the elected legislature of a province is too contingent to decide for generations to come what the Constitution should look like. The Constitution is like the self-image of the nation. That is something that has to be revered, that has to be dealt with very carefully.

Now, I agree with you, even without going into the Australian system for instance with ratification by popular vote, it can be done more democratically.

I regret that it is not being done more democratically, but in a sense I think this gives us an opportunity to go to the heart of the problem because the word "more" means that there are degrees. I think finally, the bottom line is that this is a question of essence rather than of degree. I think a constitution should be ratified by the people.

Now, about the ways there can be discussions. You can say, "Of course, these are such difficult points and people do not bother about it." I admit that. But I do think that basic issues can be put to the people for a vote so I agree with you that many partial improvements would be possible. Apparently, they are not in too much of a hurry to go in that direction because there still is no joint committee. The report has been out quite a while now but I think we now might have a chance. If proceedings had taken place in a relatively more acceptable way, people would not get so upset.

Mr. Breaugh: I want to just pursue one other point because a number of people have come before us and talked about referendums in some form. I guess in the end nobody can have a real complaint that democracy would break out and people would be for or against it, but there is a distinction which does have to be made.

The people who elect me expect me, rightfully, to read all of these briefs. They expect me, rightfully, to seek out all the expert advice that I can find. They expect me to know, not all the answers, but to be informed on these constitutional matters and that is a rightful expectation they have and the Legislature of Ontario gives us staff and there are all kinds of people who want to advise us on this, that and the other thing. The guy who works in a truck plant has none of those. He does not expect them, does not want them, does not give a damn about them. But he certainly has an opinion on a matter.

My reluctance about going full tilt into a referendum process is very simply this. Why the hell would the majority in Canada ever vote for a minority group? In the Second World War when we interned Japanese people in this country, the vast majority of Canadians said, "Yes, put them in jail." Somebody had to look at it from a different perspective. If we are always going to the noble idea of a ratification by means of a referendum, the concern that I have is they all have an opinion and I know that but it is not always an informed opinion. There is no way to make them informed and I know that, in Oshawa, they will look at me, Ed Broadbent and Allan Pilkey and say, "What do those three jerks think about this?" Depending on whether they like us or hate us, they say: "Yes, right. Ed has always done right by me before. Breaugh has never lied to me hardly. Pilkey is an OK guy so we will go with whatever way they are going on it." But there will also be people out there who say: "Well, I do not give a damn whether he was right, I cannot stand that guy and if he is for it, I am agin it." That is how the vote will be cast.

So the referendum route which sounds very attractive has some pitfalls in it and I am concerned about how would you ever convince the population of--let us pick our own province--nine million people in Ontario. You put it to them. "Do you really want to spend money to develop the Maritime provinces?" They are quite likely to say: "No, thanks. We do not want to do that just now." The Americans, for example, who do use referendums a lot have this very same problem. Everybody wants you to build a school in their area, but they do not want to pay for a school in somebody else's area so schools tend not to get built. That is a problem that is inherent in using the very noble, democratic idea that this all goes to a referendum.

Not the least problem will be how does one word the referendum? How do you put this question to the people? We are aware that one can get quite skilled at eliciting an answer that you want by means of how you word the referendum.

I am not opposed to the notion that some formal ratification process takes place. I am somewhat concerned that we deal with all of these other little problems, these nuances that you meet on the way through and I see more hope for that in a parliamentary system working properly than I do at kind of putting this all out to a great vote. I am really concerned that if that were the case, if we opted for a referendum system, that in the end minorities would always get hammered in that process, that the majority of people are not always right. We know that. Part of the reason that a parliamentary system is reasonably good is, for example, I know one or two things.

1430

The vast majority of the people in my riding do not agree with me. They tell me that at the Midtown Mall every week that I am wrong about this and I am wrong about that but, on balance, they say, "You are an idiot but you are OK." That is the parliamentary system. It is that on balance you are wrong about nine things but, you helped me last week get a job, or got my compensation problem solved so you are okay.

I am interested in how you would deal with all the little nuances that are in there. Is it reasonable to expect the entire Canadian population to sit down with something like the Constitution, go through it word by word, and really give a damn what a Supreme Court might do two years from now with that kind of wording, or care about the rights of a minority.

We had an interesting discussion this morning with a group of francophone women who were here. They did not like the Meech Lake accord. I would hate to be the one to break it to them, but they would not much like the accord that came out of the truck plant in Oshawa either, having to do with francophone women's rights. I do not think they would be real happy with that one either.

So somewhere between these two extremes we do have to strike the balance that is reasonable to us. I would like to hear your response on how you would handle the problems that are there on a referendum.

Dr. Geraets: I think you made your point very well. This, I think, is the strongest argument against what I am proposing. First, I am not in favour of what is called direct democracy, people sitting at a television, something that is being proposed, with a "yes" button and a "no" button, and on every single question the whole population would vote. This, of course, is completely out of the question.

What I am advocating, however, is different. I am not even talking about questions like francophone women's rights, capital punishment or giving money to the Maritimes. Obviously, those questions are to be dealt with by the elected representatives. I fully agree with that. But I think we should see that there is a basic difference between all those questions and very general principles that the Constitution should express.

I am actually concerned with the process that we have now, that we will have a hodgepodge Constitution because of the particular interest of provinces that we will get all sorts of things in the Constitution. This is not good for the respect that people should have for a Constitution. So my first answer is to make a clear distinction between very basic questions like equalization, for instance. Do you not think that the majority of Canadians, even the majority in all provinces are in favour of some system of equalization?

Maybe I am an optimist. Maybe I have too much confidence, but with your Oshawa people, if you talk with them I think they would understand that. That is the only thing that they have to understand, not the legal niceties of the thing. But should we have a system of equalization, should we have a Charter of Rights and Freedoms, should we have this amending formula?

That seems the most abstract thing. Who is interested in an amending formula? But I think people are starting to be more aware of the fact that an amending formula really gives us the image of the country, what the country looks like. That is how we see our federal system. That is what the amending formula expresses.



I talked earlier about the two visions of Canada. We now have a sort of intermediate vision with the present amending formula. If we take the Meech Lake amending formula, with an increase in the number of items that would have to be decided by unanimity, we go quite a bit to one of the extremes, and maybe the majority of Canadians would wish there to be a move in the opposite direction. But it is quite possible.

I do not know whether I should talk about that, but during the patriation period, I had several conversations with ministers. I know that the short text that I presented to the joint committee of the time went as far as Mr. Trudeau. What I was proposing then was that the proposals for constitutional change would go to Britain, but with the proviso that the Canadian people would have to ratify whatever would come out of it. Whether some provincial premiers were opposed to it would become completely irrelevant because it would be the Canadian people who would have the final say.

My feeling is that there could very well be a majority of Canadians in each of the provinces who would prefer to reduce the number of items for which unanimity is required. Do you get what I am saying here? Maybe a majority of Canadians say: "I am first of all a Canadian. I want a united country. I do not want to go much further in the direction of decentralization. That is what I want." So I think the principle of the equality of provinces, which sounds very nice, but in a sense can very easily become some kind of invitation to blackmail, may be thrown out by a majority of Canadians. Maybe there would be a few items that would require unanimity.

Basically, what I am saying is, first of all, there is a distinction between the essential great principles which should be enshrined in the Constitution, and all sorts of other questions, and I am not in favour of having a referendum every day on all sorts of questions. Secondly, I do think that people can get informed. Imagine if we had a debate, a country-wide debate on some of those basic questions, I think it would be a real educational venture.

In certain provinces the teachers are asked to tell people about privatization, and the virtues of privatization. I think it would be great if the Canadian people were to realize, given this responsibility they would have, the vital importance of certain principles, and in the Constitution there should be nothing else than that. There should only be those great principles.

Mr. Breaugh: You are kind of opting for what, in the auto workers' union we call a controlled democracy. We manipulate the question, and we--

Dr. Geraets: Oh, excuse me. That is a point I forgot. Of course that can be easily set but, for instance, on the amending formula, the people could be asked, "Do you approve or not?" I think that is a straightforward question. I do not see how they could be manipulated. Then, of course, people could make propaganda on one side or propaganda on the other side. That happens all the time whenever there is an election also. But if it is done honestly, and in consultations through, for instance, a joint committee, the question can be worded in such a way that it is a fair and clear question.

If it only concerns those basic principles I do not think you would have a lot of problem in your Oshawa riding talking about this with your people. It might be an extremely interesting experience.

Mr. Breaugh: They think an equalization formula means that Gretzky has to play for Toronto for half a season.

1540

Miss Roberts: It would take more than Gretzky.

Mr. Chairman: I am almost tempted to suggest we adjourn to Oshawa. It would resolve everything.

Mr. Chairman: I have Miss Roberts, Mr. Offer, Mr. Harris and Mr. McGuinty. Before moving on, I just remind the committee members that we have an extremely full afternoon and we might be guided by that in our questions.

Miss Roberts: I am always very brief. My questions are going to be straightforward.

Do you think the charter is legitimate?

Dr. Geraets: I think the whole Constitution, as it is now, is legitimate, but it is kind of border legitimacy. It is legitimate because there has been no overt and very vocal and very widespread opposition. As I said in my paper, this is not good enough; you would have to make an awful lot of noise, almost a revolution, and go out into the streets like the women did, more or less, during the negotiations in November 1981, and it does not make sense that you would have to do things like that to make yourself heard.

Miss Roberts: You are using Australia as an example. But, as you are aware, Australians must vote where we here do not have to vote. How would you be able to force the participation of even the majority of people to vote, get 50 per cent of the people to vote on the referendum you are suggesting? Are you saying that because this is such a basic principle, everyone must vote; if you do not, you get to pay three times more taxes or something? You are sort of forcing people to take part in something that is not right now part of our federalism.

Dr. Geraets: You are right. I think it is a civic duty to vote even if there is no sanction, but again, you say maybe we would not get more than 50 per cent who actually would express a vote, but you have a lot of elections where, in fact, because we do not have any element of proportional representation, either provincially or federally, we can have a majority government that has never had the support of more than 40, 42 or 43 per cent of the population. So, of course, we would have to hope and do our best to get people out to vote. I am not advocating at this stage an obligation to vote.

Miss Roberts: It would not concern you then if only 30 per cent voted, just as long as there was some legitimacy behind the referendum?

Dr. Geraets: It would concern me an awful lot, and I think if that were to happen, we might have to think seriously about changing this point, but at this stage I am not advocating financial sanction for those who do not vote.

Miss Roberts: Just one brief comment. With respect to constitutional affairs, you said that the Premier (Mr. Peterson) does not speak for this province in particular--

Dr. Geraets: I did not say that.

Miss Roberts: That the Premier would not necessarily be able to bind his province.

Dr. Geraets: I said only this, that we should not take for granted that the Premier speaks for the majority of the population. He has been elected and he should represent his province, but I think the very fact of being elected Premier of a province has some effect on the person who is elected. He has a task now. He has a task to look after particular interests of a particular province, and I think that means that it is not a very rational thing to have 10 out of 11 who are in that situation decide about the nature of the country.

Miss Roberts: So you would say that the Prime Minister does speak for Canada then?

Dr. Geraets: Hopefully.

Mr. Offer: I must say I have some concerns with respect to how a plebiscitary type of democracy might impact on minority rights. I am wondering if you could comment on your proposal vis-à-vis some of the concerns we have heard from people, representations from the Northwest Territories, the Yukon, aboriginal rights, aboriginal persons, and how they would fare with respect to your particular proposal.

Much of the discussion, though not all, has centred on the unanimity formula. The unanimity formula in this particular section has 10 subsections. What is it that you are suggesting we put to the people?

Dr. Geraets: I distinguished between the binding referendum, which would only be on the transfer from the executive federalism system to the population of the provinces. The second point is to put to the test the proposed formula in its entirety. I do not propose at this stage another formula than the Meech Lake accord formula, but people may think this relates to a decentralized country and that is one reason they would disagree with it.

Your first question was about the aboriginal people. If questions concerning them, like self-government, were put to a universal vote, if my information is correct--and I had a conversation about this with George Erasmus a while ago--they at least have the feeling that they have a majority of Canadians behind them; a majority of Canadians feel that the native people should be given much more of what they call self-government. Of course, that would have to be spelled out more clearly, but I think it can be done in certain ways that do not immediately affect land rights.

Land rights, of course, is a very complicated issue, and I do not think the land rights of a particular band should be put to a plebiscite. I am not advocating that at all, but again, some very general principles about the place that those distinct societies ought to have within Canada should be in the Constitution. My conviction is that a majority of Canadians would not have much of a problem with that.

Mr. Harris: I will be very brief. I am not sure that what you are proposing is any better or any worse than what has happened. A lot of us have problems with the process. I guess in 1981-82, Bill Davis spoke for Ontario and he got somewhere around 25 per cent of the eligible vote. This round, David Peterson was speaking for Ontario and he got something less than 30 per cent of the eligible vote, so there is something wrong there as well with the way we are utilizing that process with party discipline and what not.



I think I understand what you are saying, where you are coming from. I do not want you to take offence at the question. Most people who ask me to put something to a plebiscite do not like what is happening. That is usually when people come to me and ask: "Why can't we have a referendum on this? Why can't we get a say?" Usually they ask me that because whatever system we are using is not coming to the result that they want. Are you in that category?

Dr. Geraets: No, categorically not, and I think I proved that by what I just said very briefly about the patriation period. When Prime Minister Trudeau had not much support from the provinces and had to go to Britain and was encountering those difficulties, I was in favour of the type of constitutional change he was proposing, and I made proposals exactly in the same direction.

I have reservations--I did not want to talk about that--with regard to certain aspects of the Meech Lake accord. My main reservation, however, is with the amending formula. That is why it is the only point that I really mentioned to you. I would have preferred, for instance, to see Quebec, as well as the native peoples and the Acadians, recognized in the preamble to the Constitution rather than have this interpretive clause that we have now about the distinct society.

I am not a constitutional lawyer and I did not want at this stage to go into a discussion of any more specific points, but I am not sitting here because I am against the fact that Quebec has willingly signed this document. I have certain apprehensions. I share the apprehensions of women. I think, for instance, that the Charter of Rights should be above any other law and I do not agree too much even with the derogation clause, but that is not why I am sitting here.

Mr. Harris: OK.

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Mr. McGuinty: I think much of what you have said is based on the premise that had to do with the alleged conflict of interest of the premiers in presuming to move beyond their mandate, which should be limited to particular interests and concerns of their provinces, and to extend that mandate to deal with the types of things dealt with in the accord.

I am wondering, first, if there is not quite a series of precedents in Canadian history which indicate that provincial premiers have indeed assumed that right without being questioned. But even if we were to assume that they did exceed their mandate, I am wondering in a sense what that has to say about the deliberations that we are up to, because we, my colleagues on the committee, have listened to numerous briefs that deal with francophone rights in Ontario, women's rights and native rights, all to be considered within Ontario, but also I think much more substantive issues which have implications that transcend provincial boundaries and which deal with the very fabric and the very future of Canada.

If we accept your premise that the premiers really have no business in exceeding their mandate which is limited to provincial matters, what does that say about us?

Dr. Geraets: I did not say that their mandate is limited to provincial matters. In fact, if we continue with the system of executive federalism and this is definitively enshrined in the Constitution and accepted

by the Canadian people, of course when they are elected they will be elected to be part of this group of 11 people and that will be part of their mandate.

However, what I am arguing is that it is not a desirable and very rational situation. I do not know whether I make myself clear. I am not so much saying they are overstepping their mandate. We do have a Constitution that gives them a certain responsibility. They exercise that responsibility. They could do it in a more democratic way, as Mr. Breaugh said before, but they do not as such overstep their mandate.

However, I think in constitutional matters it is very important to distinguish between the legal aspect and the aspect of legitimacy and the government of the day, the Premier of the day and the Legislature of the day--we have seen again what can happen, and I mentioned Manitoba--I do not think it is a rational and very defensible way to have them decide on the very nature of the country; again, this difference between the Constitution and any other specific law.

You talked about precedents. Of course, yes, there are precedents, but I think we should not continue to create more of them in a sense, but try to get out of the system.

Mr. Chairman: I want to thank you very much on behalf of the committee for joining us this afternoon. I think you have raised in some detail an aspect of the whole issue of consultation which certainly has not been put before us in quite that way. I know that is going to continue to raise a number of questions as we pursue it and we thank you very much for bringing that perspective this afternoon.

Dr. Geraets: Thank you for having me.

Mr. Chairman: I might now call upon Donald Warren, the deputy reeve of the township of South Crosby, if he would be good enough to come forward. I want to welcome you this afternoon. We have, I understand, one copy of your brief so we will make copies and circulate it when we get back to Queen's Park. If you would like to present it to us, then we will follow up with questions, as has been our habit.

DONALD M. WARREN

Mr. Warren: I feel a little embarrassed sitting here after the scholarly discussion that has just taken place, but I rather suspect that many of you have rural backgrounds and, if you have a rural background, you will understand that we do not muss and fuss around too much.

Mr. Villeneuve: That is a good way to do it.

Mr. Warren: That is right. First, let me thank the committee for allowing us to express the feelings of the township of South Crosby and some 60 other municipalities from across Ontario who have joined us in requesting the Premier of Ontario to reconsider the stand he has taken on the Meech Lake accord. In rural Ontario, we take politics seriously and we are inclined to speak out vigorously when we feel that our democratic rights are at stake. Hence our strong objections to the Meech Lake accord in its present form.

To thousands of us in Ontario and to literally millions of people across Canada, the Meech Lake accord poses a real threat to what we believe to be the roots of a democratic society. One of our major objections to the said accord

was the manner in which it was spawned and thrust on an unsuspecting Canadian public. I am sure you have heard this argument many times before.

Eleven men, some new in the role of leadership, many of whom were at rock-bottom in the popularity polls, and none of whom, to our understanding, had requested a mandate to make a decision which could have such far-reaching effects on who and what Canadians should become, gathered at Meech Lake and after a prolonged bargaining session reminiscent of a union-management deal came up bleary-eyed and in secret at 3 a.m. one spring morning with a conclusion that had eluded more skilled politicians for over 120 years.

Even township councillors, who from time to time meet for long hours, soon learn that decisions made after midnight are not worth a damn. Surely this is not the way a Constitution of a democratic society should be changed. However, the real failure of the democratic process came when our own elected representatives in Parliament were told in no uncertain terms by their leaders that the accord was a fait accompli and that any party member who broke ranks would suffer for it.

We know that one federal member who did, in conscience, break ranks and spoke out publicly against the Meech Lake deal was chastised and demoted by his leader and another with more guts left the party altogether. Obviously, with a conspiracy of silence by the premiers of the provinces seeking greater power and the ruling and opposition parties of the federal House jockeying for Quebec votes, there was no legitimate place for the great mass of ordinary Canadians to express their disapproval of the deal. That is probably why we jumped into it, because it was not in our jurisdiction either.

To many of us in Ontario, it was reminiscent of the issue of separate school funding when the then Premier William Davis unilaterally dictated to Ontario his edict on the matter and left Ontario citizens with no place to protest until the next election. If we wish to carry this analogy further, we might speculate it was a sleeper issue that decimated the Conservative Party last year and is leading to massive unrest and religious problems in our school system now. Surely, constitutional fiddling on a national scale such as that at Meech Lake is more disturbing than the provincial matters just referred to. But there is a startling similarity to the process, a process we find intolerable.

Many of us, when we were informed through the press of Meech Lake, felt that we had been betrayed and that this just could not be a democratic Canadian government's approach to constitutional change, but rather an approach one might have expected from Stalin's Russia. We also believe that in a democracy at least one opposition leader should have given the dissenters someplace to hang their hats. However, in this instance federal government leaders, fearing to annoy Quebecers because of their voting power, blithely decided to ignore their responsibility to the remaining 20 million of us who live elsewhere across this land.

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Please do not misunderstand our position. We sincerely welcome Quebec into Confederation, but we feel that the democratic price other Canadians will have to pay is too high.

It appears to us that our political system is in jeopardy when 11 men attempt to control the destiny of our nation by muzzling the elected representatives and in that way curtailing the rights of the people to have meaningful input into matters of such grave significance to us as a country.



I was following with interest the discussion this gentleman over here was having with the last person who was speaking. It seems to me that a far more reasonable process would have been for the premiers to go back to their legislatures after the proposition had been given to them and discuss with the members in the legislatures what their feeling was on this particular matter and then make their decision afterwards, instead of making a decision and then forcing everyone else to accept that particular decision.

Had it been done the other way--and you may argue that it could not have been done that way--I rather expect that many Canadian people would not be as upset about the Meech Lake accord as they are. This way, the way it happened, the people I helped to elect had no real voice in what was going to happen. Therefore, they did not really represent me in this. If they had had an opportunity to have represented me by at least having this discussed with them before a decision was made, then I would have felt that the democratic process was indeed working. This way, it was not.

We believe that not only was the process of constitutional change flawed but the actual document as well.

We are concerned that each province is to have a veto over certain constitutional matters, whatever these happen to be. We doubt that even the designers of the accord know what this expression signifies. Does it mean that some of our provincial leaders can now use this device to blackmail the federal government on certain national issues?

It appears to us this has happened already. During a free trade discussion in Toronto in November 1987, Mr. Peckford, after receiving certain assurances from Mr. Mulroney, decided to opt for free trade. It does not go unnoticed either that 24 hours after Mr. McKenna of New Brunswick opted for free trade, the media announced that a large shipbuilding program had been awarded to his province by the central government. We cannot help wondering what goody Mr. Buchanan was fishing for as his payoff for free trade consent.

Does this mean, then, that some of our reactionary, loose-cannon premiers--and if you like, I will name them--or those of the future will be able to hold all Canadians up to ransom to gain special concessions for their provinces? Could a small province such as Prince Edward Island, for example, frustrate the will of 25 million Canadians on some important issue of the future?

Our political leaders say, "Trust us" or, "Take our judgement on faith." Let me remind you that the only thing most Canadians accept on faith is their religion and their God, not politicians, whom we have all too often found to speak with two voices.

We believe, as every leader from Sir John A. Macdonald through Pierre Elliott Trudeau did, that a strong central government is essential to Canada's welfare. Indeed, the renowned Canadian historian Donald Grant Creighton, in Dominion of the North, echoes what used to be taught all children in Ontario schools of my generation. This was basically that the Fathers of Confederation, having seen the American Civil War erupt because each US state was too powerful or sovereign, saw the flaw in such a system and deliberately set up the British North America Act with strong federal powers to prevent the same from happening here.

Surely the provincial veto and further rights granted to the provinces under the accord which allow them in effect to control who shall become

Supreme Court judges and members of the Senate further erode the power of the central government. It is difficult for us laymen to imagine a provincial Legislature suggesting names of persons for any of these important positions who have not been tied to their party in some devious political way. This federal concession alone would appear to weaken not only the central power but also the fairness of the Supreme Court of Canada.

Another clause in the Meech Lake accord that concerns us is the opting-out clause. This suggests that the provinces that meet national objectives, whatever they may be, will be able to work around national programs set up by the central government, as long as they have a program in their province that corresponds in some degree, and still be able to collect federal funds, whether their plan meets the spirit of the national program or not. This, of course, means that the chances for a consistent, country-wide federal program would be almost impossible.

We object to the fuzzy language entailed in "national objectives" and would like to see them defined clearly and precisely so that ordinary Canadians like myself would know what was meant.

We cannot help but contemplate what might have happened to old age security and medicare programs had the Meech Lake accord been in place at their conception. Certainly, provinces such as Alberta would now have extra billing and would still have been able to collect full federal funding, something a former federal government had the power to disallow and courageously did. With some of the right-wing leaders we are faced with today, we suggest that millions of ordinary Canadians would have been deprived of these indispensable programs for the poor and the elderly or, at best, offered a watered-down version.

It is interesting to note that the federal government, in its proposed child care program, has placed few if any restrictions on the provinces as to how our tax dollars are to be spent. Does this mean that children in one part of Canada will have less chance of a fair child care program than those in another? We believe it does, and this is not right. There is no reason why a child born in Newfoundland or the Yukon should have less care than one born in Toronto. In all fairness, the program should be consistent country-wide.

Fourth, we join the women's organizations across Canada who fear that this accord will dilute their new-found rights set out in the Charter of Rights and Freedoms for all Canadians. They fear--and we agree--that, in all Canada, but especially in Quebec, their rights may be in jeopardy.

We believe a serious precedent was set when the Toronto Board of Education took Ontario to the Supreme Court of Canada over separate school funding because they felt that Mr. Davis's dictatorial decision breached the charter. The board of education lost its case on the basis that the British North America Act, our erstwhile Constitution, superseded the Charter of Rights.

Just recently, when the people of the north took the Meech Lake accord to task in the courts on the basis that it interfered with their rights and freedoms, the court indicated that the Constitution overruled these rights and they lost their case on that basis.

As Quebec's "distinct society" is now to be enshrined in our Constitution, is it unreasonable to believe that a Quebec government would not be required to honour the charter if it so wished? We have seen little in

modern politics to convince us that politicians will follow the high road if the low road favours their designs.

Therefore, women across Canada are uneasy with this deal because they feel, as do many minority groups, that their only protection lies in the Charter of Rights and Freedoms. With the examples given above, it would appear their fears are justified. We regret that leading politicians appear to be so nearsighted when it comes to the rights of these groups who are being overlooked.

This accord appears to be particularly unfair to the people of Canada's north. Not only are the people of the Yukon and Northwest Territories denied the opportunity to suggest names for the Supreme Court of Canada, but for the Senate as well. Their concern that they may never be able to become provinces is completely justified in our eyes when they say that they will never be able to get all provinces to agree for them to reach this state.

With British Columbia perhaps hoping at some time to absorb the national wealth of the Yukon, and with some of the prairie provinces perhaps casting surreptitious glances at the rich natural resources of the Northwest Territories, it would seem highly improbably that any of these western premiers would support provincehood for either area. Indeed, it is even now impossible for them to accept the justified rights of our native peoples to certain lands because they want the rich resources of the disputed lands to fatten their provincial coffers.

Under the Meech Lake accord, it appears to us that the northern peoples have been shafted. We know we have no need to remind the committee members that our native peoples were indeed our founding peoples and that they deserve far better treatment than the accord allows them.

Finally, we object to the blank cheque the accord gives the province of Quebec by making it a distinct society. If fuzzy language is a characteristic of the accord, this indeed is the vaguest. We expect that no one, including the politicians of Quebec, know what is really intended and we see very serious problems when the courts begin to wrestle with this phrase.

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Does the phrase "distinct society" mean that Canada is now two distinct countries, one for Quebecers and one for the rest of us? If press reports are even vaguely accurate, it would appear that way. Mr. Bourassa was reported as having said immediately after the accord was hustled through the Quebec Legislature that Quebec had achieved its greatest political victory in 200 years. Later, he was reported as having warned Canada's Senate not to hold up the accord. Why the rush and the pressure if it is a fair document?

Even our Prime Minister reportedly said in one of his speeches on the benefits of free trade that it was good for Canada and good for Quebec, a sentiment echoed by Mr. Turner in precisely the same words in a CBC year-end interview. Any serious student of English could tell you that the co-ordinating conjunction "and" joins words, phrases and clauses of equal value. Therefore, in the minds of the present party leaders, are we already considered two equal countries? To us, this is an unacceptable conclusion. We believe in the concept of one Canada from sea to sea, probably an old-fashioned idea but one we fail to apologize for.



As we understand it, the accord would be unfair not only to the English-speaking people in Quebec but to the French-speaking people across Canada. When Canada became an officially bilingual nation, hundreds of thousands of English-speaking children became involved in French immersion programs. If Quebec is to become a French-speaking ghetto, of what use will it be for the other Canadian provinces to increase their costly services in the French language? What protection under a less fair government in New Brunswick would the Acadians have, or the francophones in Manitoba, Ontario or elsewhere? In effect, what rights in Quebec would English-speaking Canadians have?

Mr. Bourassa is already making noises that he is considering backing away from his election promise of allowing advertising in English. According to the Meech Lake deal, he is probably justified in doing so. Is it not the accord's direction for Quebec to promote its distinctness? All this arouses our concern that our country will be divided even more than it is along linguistic lines. It will be French in Quebec, English for the rest of Canada, and we shall all be losers.

Indeed, the organization APEC--I do not know whether you are acquainted with that or not, but it has been running rampant down through our area; it is called the Association for the Preservation of English in Canada--has been making headway in Ontario in the past few months. This organization is attempting to split the country on linguistic lines, and in the area where I reside it has many dedicated followers. We understand that it has branches in other provinces where English-speaking people also seem to feel threatened. We fear that the accord and the "distinct society" clause are giving more credence to their approach. It is too bad that something intended to bring Canadians together is having just the opposite effect because of the basic unfairness to so many of our citizens.

Furthermore, what safeguards are there in this accord to prevent a new wave of separatism from sweeping through Quebec? It appears to us that the roots of separatism run deep in Quebec's culture and need only a little spark to ignite them. In a realistic world, political parties change and, inevitably, they will in Quebec. We see both the "distinct society" clause and free trade as invitations for a future Quebec government to leave the Canadian family.

Let us reiterate. We welcome Quebec as a full-fledged Canadian partner, but we feel the price is too high. We believe in a Canada where Canadian and Canadian have equal rights and privileges under a strong central government. There should be no exceptions to this equality, because of the divisive potential. If the results of the accord are to mean increased racial pressures and unfairness to a large segment of Canadian citizens, we feel that the price paid for Mr. Bourassa's signature was out of line.

Unless Quebec is prepared to reopen the accord for amendments that would make it a fair document for all, we wish no part of it. We do not feel that Ontario should support the deal until its basic flaws are remedied.

In conclusion, the resolution passed by our council in early June requesting Mr. Peterson to kill the accord was supported by some 60 municipalities across Ontario. I have that here, and I would like to leave it with your secretary at the end of my presentation. These municipalities came from across Ontario, from Red Lake to Renfrew. Their endorsements were sent to the Premier and to their members of Parliament.

We have been in municipal politics long enough to know that many resolutions pass through Ontario's municipalities, and we consider that having 60 support our resolution in its rough form on June 1 was a pretty good indication that there is a lot of opposition to this particular accord in rural Ontario.

Those of us who are of Second World War vintage can see a parallel in this accord between the reaction of our leaders to the demands of Quebec as a price for its signing the Constitution and Neville Chamberlain's remarks when he came back to England after having made his repugnant deal with Hitler and announced triumphantly, "We will have peace in our time." We did not see that peace and neither is there any guarantee that, with the Meech Lake accord, we shall see that peace in Canada. Instead, many of us across the land see it as an invitation to Quebec to seek sovereignty more than ever before.

As rural Canadians, perhaps set in our ways but with a long record of opposing injustice wherever it rears its head, we would rather face the unpleasantness now than leave it for our children. That is one reason why our council respectfully petitions the Premier of Ontario to refuse to sign the accord for this province until at least the amendments are made that will make it an acceptable document for the people of Ontario before its bizarre and unequal laws are carved in stone.

We understand that there are three years for each province to make up its mind on the accord. We respectfully recommend to the Premier that he delay signing the document until after the next federal election before committing us to Meech Lake with all its discriminatory flaws or at least to allow a free vote in the Legislature so that the people of Ontario can at last make their voices heard.

We feel convinced that, were these conditions to be met, those who support us would feel that the democratic process had been satisfied and would be prepared to live with the results, whatever they might happen to be.

Thank you. That is the presentation.

Mr. Chairman: Thank you very much. I may have missed it, but did you read the motion that the 60--

Mr. Warren: No, I have it here, included with my paper. Would you like me to read it?

Mr. Chairman: Yes, please. I think, just so we can have that entered.

Mr. Warren: "It is moved by Don Warren, seconded by Wayne Sly, to pass a resolution that the corporation of the township of South Crosby appreciates the importance and desirability of Quebec's joining in the Canadian Constitution; however,

"Whereas it believes in a strong central Canadian government and;

"Whereas it believes that the concept of two Canadas is unacceptable to the Canadian people and;

"Whereas it believes that no province in Canada should have power to veto over matters agreed to by a majority of Canadian provinces and;

"Whereas it believes that, were the Meech Lake accord to be supported by the province of Ontario, many social services could be curtailed in provinces less fortunate than our own.

"Be it resolved that the corporation of the township of South Crosby go on record as opposing the changes in our Constitution suggested by the Meech Lake accord and further requests other municipalities in Ontario to join us in urging the Premier of Ontario and his government to oppose these changes to the Canadian Constitution when it comes before the provincial House for ratification."

There are copies of this resolution and that is pretty well the end of it.

Mr. Chairman: Thank you very much. Mr. Cordiano.

Mr. Cordiano: Thank you for being very frank and certainly very concise in what you have said to us today. Your message comes out loud and clear.

I just want to deal with this question. We have heard from many groups that may have difficulty with various aspects of the accord. Correct me if I am wrong, but you totally oppose the agreement; you want no part of it. Is that correct?

Mr. Warren: We want no part of it unless it is amended. That is correct.

Mr. Cordiano: I see. So you are advocating certain amendments?

Mr. Warren: If it were amended, I think that most people, any reasonable people, would probably accept it.

Mr. Cordiano: OK. I do not recall you making specific recommendations in your presentation. Perhaps you could just go over those again for me. Did you make specific recommendations with regard to amendments? You would like certain changes made?

Mr. Warren: Yes, we did in the last paragraph, sir.

Mr. Cordiano: OK. Can you just reiterate those for me, so I can be very clear in my own mind about what it was that you wanted amended?

Mr. Warren: The conditions we had hoped would be--

Mr. Cordiano: Yes, the specific amendments you were recommending.

Mr. Warren: OK. The thing that really annoyed us was the process.

Mr. Cordiano: Yes, OK, but--

Mr. Warren: Then we got into the veto. We do not believe that each province should have a veto. We feel that it is weakening the central government too much.

Mr. Cordiano: Yes.



Mr. Warren: We do not agree with the opting-out because we feel that it is a problem in so far as certain provinces sometimes have loose cannons rattling around in them, and our concern is that you never really and honestly know what a loose cannon is going to do. If nine premiers wanted something or felt that something would be good for Canada and the 10th did not, then it appears to us this would be a little bit of an overbalance. In other words, we do not like the idea of one province being able to veto. I know that now there is a seven-three vote or something like that.

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Mr. Cordiano: There are certain aspects of the Constitution which now require unanimity and there are others, the majority of which require the seven-and-50 rule. What we are talking about is bringing under the unanimity rule certain other aspects, such as the Supreme Court and the Senate, etc., and increasing those elements.

Mr. Warren: That is right. Perhaps our difficulty is with the Supreme Court. We do not like the idea of one province being able to veto. It does not really matter what it is; we just do not like the veto. We have accepted it in Quebec for a number of years, I know. In that particular instance, it is probably OK because it was something that came in a long time ago. If you get all the provinces able to veto certain matters--it does not matter what they are--you still have a hodgepodge, and how do you ever get anything done with the broad spectrum of provincial leaders that we have across this country?

Mr. Cordiano: We have in Quebec what most of us would consider, of the two leading parties--and obviously over the years there have been various parties represented in the Quebec National Assembly--but certainly the Liberals are considered by most Canadians to be a moderate party, let us put it that way, when you compare them to the separatist party, the PQ. They have come out with a set of proposals which formed the basis of the Meech Lake accord.

If we are saying to Quebec at this point in time that we cannot accept the moderate, modest proposals which they have brought forth, then what are we asking them to do in terms of the kinds of proposals that we are willing to accept? I hear what you are saying and certainly other groups have pointed that out. My difficulty is, do Quebecers not have a say as well in what should be part of the Constitution as they see it? We have asked ourselves this question for a number of years: What do Quebecers want?

Mr. Warren: All I could say is that I think, as I mentioned before, that we believe in a Canada where Canadiens and Canadians, if you wish to call them that, have equal rights under a fair and strong central government. We do not believe in privilege for anyone. I think perhaps that is the case.

Maybe I am just reflecting my own thinking on this, but I believe that we have been in this country together for a long time and I do not think any specific group should have privileges that other groups do not have. I accept that the Canadiens and I are brothers. We are the same country, the same people, we live under the same conditions. Why should one brother have more than another?

Mr. Allen: I think, Mr. Warren, most of us on the committee, like many of those who made presentations like yours, have some very severe reservations about the process, which I gather is your central concern. We

have wrestled with that a good deal. I personally think it is perhaps a little extreme to characterize the process with metaphors that relate to totalitarian regimes of one stripe or another.

One knows, for example, that what we got in the Meech Lake accord came out of an impasse of debate that took place in the early 1980s and that there was a good deal of government sounding back and forth and discussion in the country around questions pertaining to how Quebec would get back to the table in our federal system and that, over time, governments evolved positions and responded to other propositions such as the five points that came out of Quebec.

Therefore, there was a fairly extensive process around that, notwithstanding the fact that it did not ever get back to legislatures for formal decisions and for perhaps local debate in our communities, which probably it should have done. I think we are very strongly of the opinion that in the future the process should never get so far ahead of the legislatures and the elected representatives of the people and of the communities out there themselves that there would not be an opportunity formally struck for that debate to take place in the public mind before things get cast in stone. I think we are very strongly with you on that particular concern of yours.

I will not pursue some of the questions that I think were implicit in Mr. Cordiano's questioning, although I think there is more to follow up there. I would like to come back to the question of your concern about consistency of national programs and what Meech Lake implies in that regard. You remember, as I do, that there has been a lot of discussion back and forth, "Should it be national objectives or should it be national standards?" That seems to be the critical terminology we are wrestling around. I wonder whether it really makes any difference as long as we have one of those two words. I will tell you why and see what your reaction is to this.

One can have a federal government that can set out, as this one has done, for example, a day care program and it may enshrine that the national standard has to be that there virtually is no national standard. They can say the standard has to be that there is diversity, accessibility, different kinds of programs, and phrase the language of standards in such a way that there is a minimum standard required, if you like, or a diversity of standards as part of the standard.

On the other hand, one can have a government that would say, as we did with the Canada Health Act, there has to be national equality of application, accessibility for all people, there has to be public funding and it has to be universal in all respects and that extra billing cannot pertain and so on. But does that not depend on the politics of the government as to how language like "standards" or "objectives" gets applied? Does it, therefore, make very much difference as long as we have something there in language that says either national objectives or national standards and then any government will take it from there in terms of its own particular political stripe as to how far it wants to go?

Mr. Warren: I suppose that is the case. However, in my mind, I see standards and objectives as being rather different. For national standards, in my mind's eye I visualize a list of things, maybe a slim list of things, that are necessary and that each province would have to adhere to if it expected to get federal funds for this particular program. National objectives, to me, are rather like what you make on New Year's Eve; they are my good intentions.

Obviously, my fear is that many of the provinces would simply say, "Yes, we will meet national objectives," but how are you to tie them down if you do not have something there that says, "You will have this and this and this"? It may be a short list, but there should be certain fundamental standards you feel a program should produce in a province before it gets federal funds. If it is national objectives, in my mind, it is too airy-fairy. It is something altogether different from, say, a code of standards.

Mr. Allen: I guess I have yet to see any definitive statement which tells me it would not be considered national objectives if a government were to say that our objective is the establishment of a publicly funded, universally accessible, parent-participatory national day care program.

Mr. Warren: But these are the standards that we expect you to follow.

Mr. Allen: I can see that language being incorporated in objectives, and I am not sure that anyone has told us yet, definitively, that could not hold in the courts.

Mr. Warren: I am no lawyer, sir, and my language is something I studied for a few years many years ago. It appears to me that, in my mind, standards and objectives are somewhat different. I still see a standard as something that is a fairly concrete code of conduct, if you like, whereas an objective is something that perhaps I would like to see but I will not necessarily meet the ideal that I see in this particular objective.

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Mr. Allen: You do have other people on your side in this debate. There is no question.

Mr. Warren: I am sorry. I have been out of the country for a month and I have missed a good deal of it.

Mr. Chairman: I want to thank you on behalf of the committee for joining us this afternoon and also for leaving with us the motion that was circulated from your council and that will become part of the record of our hearings. As Mr. Allen said, you have expressed a number of views which others in the last month or so have expressed as well and you did so with vigour and I think we got the message loud and clear.

Perhaps as one last comment, I would say I do not think there is anyone around this table, and indeed from discussion with some members of the federal joint committee, in terms of process I think we all emphatically agree we would not want to have to go through this again. Whatever is involved in the process for future constitutional amendment, the period of listening to people in the broad sense must come before and not after.

We have been wrestling with that in terms of what we might, in fact, be recommending. That was a point you made very strongly and I think I can state quite categorically that we share that very firmly.

Mr. Warren: Thank you. If you are successful in your endeavours to have this take place, we shall be most thankful, I am sure.

Mr. Chairman: The clerk will take the petition.

I now call upon the representatives of the the Public Interest Advocacy



Centre. I believe Glen Bell, the associate general counsel, is with us this afternoon but not Mr. Roman.

I apologize. In our afternoon sessions, I am afraid as we get to the middle of the order we start to slip a bit in our time, but that will not curtail the time you will have before us. We want to welcome you here this afternoon. I am covered here in paper but I believe we all have a copy of your brief. If you would like to proceed in the discussion of it, we will follow up with questions.

#### PUBLIC INTEREST ADVOCACY CENTRE

Mr. Bell: The title of the brief is Living with Meech Lake: The Supreme Court of Canada.

As you might guess, the Public Interest Advocacy Centre wishes to restrict its comments to the provisions of the Meech Lake accord that deal with the Supreme Court of Canada and specifically with the appointment process. The Public Interest Advocacy Centre takes no position on some of the larger issues that we have been discussing here this afternoon.

First of all, a few words about the centre. The Public Interest Advocacy Centre is a private charitable organization that represents groups across Canada which would otherwise be underrepresented or not represented at all in judicial and regulatory proceedings. The Public Interest Advocacy Centre has represented low-income and disabled consumers, as well as native groups and environmental groups before the various regulatory tribunals and courts in Canada. Public Interest Advocacy Centre lawyers have also appeared before the Supreme Court of Canada on several occasions.

Ordinarily, PIAC, if I can use the acronym, does not speak in its own name but on behalf of others. However, where a policy affects the interests of PIAC's usual client groups, as does the question of appointments to the Supreme Court of Canada, we feel obliged to comment.

Let me first say a few words about the role of the Supreme court of Canada. The court's role in constitutional matters changed dramatically with the coming into force of the Canadian Charter of Rights and Freedoms. Whereas, in the past, the court's main task in constitutional law was to arbitrate disputes over the division of powers, now the Supreme Court is also the final arbiter of the relationship between the individual and the state and of the merits of some legislation. The recent decision of the court in the Morgentaler case is an example of the new role the Supreme Court is being asked to play in public policy debates.

It is therefore more urgent than ever that we recognize the need to have a Supreme Court in which the people of Canada may have the greatest possible confidence. Its members must be seen as being the brightest and the best among our judicial contingent, and their independence from the political process must be assured.

The accord contains six main features relating to the Supreme Court of Canada. I would just like to focus on one of them, which is the fourth one. Where a vacancy occurs on the Supreme Court, the federal government will fill it from lists of nominees supplied by the provinces, thus creating the so-called double veto.

This is the only feature of the accord relating to the Supreme Court

whose substance has not been tested in past practice and this relatively new process is a focus of our concern. The provinces will now have a large voice in the appointment decision. We believe that steps can be taken by Ontario to ensure that the appointment process is strong and fair.

In our view, there are three main areas of concern with the process as proposed by the Meech Lake accord. The first problem, as you have probably heard about already, is deadlock, the second one is patronage and the third is the exclusion of federal judges and territorial judges and lawyers from consideration for appointment. I would like to deal with each of these in turn, if I may.

First of all, the problem of deadlock: The obvious risk of the double veto system proposed under the Meech Lake accord is that the provinces and the federal government will be unable to agree on the person to be appointed to a vacancy. This could lead to delays in the work of the Supreme Court, as well as unseemly wrangling over the qualifications of particular individuals. The appointment could become a bargaining chip in federal-provincial negotiations so that factors unrelated to a candidate's ability could weigh in the decision. Highly qualified candidates might refuse to allow their names to be put forward if they foresaw that they might become the ball in a game of federal-provincial ping-pong.

The second problem is patronage. Patronage is an assault on a taxpayer. It says to him or her, "We are going to use your money to pay our friends." Judicial patronage compounds the evil by undermining the public's trust in the organ of the state that embodies the rule of law. The deleterious effect that even the suggestion of partisanship could have on the credibility of the Supreme Court makes it an unacceptable risk. Unfortunately, the Meech Lake accord does not address this issue.

By delegating the nomination function to the provinces, it actually increases the risk that an individual's partisan loyalty may creep in as a factor in the preparation of the lists of candidates. The Supreme Court of Canada now plays a vital role in the definition of individual rights and freedoms and in the review of legislative policy. It will be called upon to examine the constitutional merits of legislation which was once part of the program of a particular political party. Even a hint of partisan bias in the court will undermine the absolute trust that Canadians must give to it.

The third area of concern is the exclusion of federal judges and territorial judges and lawyers from consideration for appointment to the Supreme Court. As you are aware, there is no process by which judges of the territorial courts or members of the territorial bars may be sponsored for appointment to the Supreme Court of Canada. This problem has been recognized by many commentators.

A further problem which has not been widely recognized is the fact that judges of the Federal Court of Canada may also be overlooked by provincial governments when nominations are being sought for a vacancy in the Supreme Court. The tendency will be for the provinces to nominate judges from their own provincial superior courts or senior lawyers practising in the province. This will leave judges of the Federal Court without provincial sponsors. The talent pool will thus be artificially restricted.

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If I may just depart from the text for a moment here, one has to wonder whether a current member of the Supreme Court, Mr. Justice Le Dain, who was promoted from the federal Court of Appeal, would be on the Supreme Court now if the Meech Lake process had been in force at the time he was appointed. He is a distinguished jurist and can only be said to be a definite contributor to the credibility and quality of the Supreme Court of Canada.

The creation of a reliable screening mechanism by the government of Ontario would eliminate all of these risks, at least as far as Ontario nominees are concerned. The Public Interest Advocacy Centre believes that an appropriately constituted nomination advisory committee would provide the solution.

PIAC recommends that the government of Ontario establish an advisory committee which would submit to the Premier the names of qualified individuals for placement on the province's list of nominees for appointment to the Supreme Court of Canada.

Recently, Ontario's Attorney General (Mr. Scott) announced his intention to establish such a committee for provincial court appointments. There is no reason that this worthwhile initiative could not be extended to nominations for the Supreme Court of Canada.

We believe that such a committee would function best if it had the following composition, procedures and legislative status.

I am dealing, first, with the composition of the committee. The composition of a nomination advisory committee is the key to its success. A properly composed committee will assure the selection of the highest calibre of candidate and will avoid any hint of partisan bias. In our submission, the nomination advisory committee should be composed as follows: a retired judge of the Supreme Court of Ontario, the Federal Court of Canada or the Supreme Court of Canada, and if from the latter two courts, with some substantial connection with the province; the delegate of the federal Minister of Justice; the delegate of the provincial Attorney General; the delegate of the Canadian Bar Association; the delegate of the Law Society of Upper Canada; two distinguished laypersons appointed by the Premier; and the delegate of the deans of the law schools of Ontario, making a total of eight members.

I will not go into detail as to the rationale for including all these particular persons on the committee. I will just mention one, however; that is, the delegate of the federal Minister of Justice. It may at first seem unusual to have a delegate of the federal government on a provincial nominating committee. However, I believe that by doing so we gain two benefits.

First of all, the committee process gains credibility in the eyes of the federal government, thereby reducing the risk of deadlock. In the second place, we provide a channel for bringing members of the Federal Court to the attention of the committee, thereby increasing the talent pool available for appointment to the Supreme Court of Canada.

Just a few words about the procedures of the committee: It would be best if the nomination advisory committee were allowed to establish its own procedures. However, I would just like to make some suggestions about two concerns; first of all, publicity. We believe that at this stage of the process, the nomination stage, there would be no need for publicity. Indeed,



publicity would probably be harmful at that stage. It should be said, however, that a confidential nomination process would not be inconsistent with a public confirmation process if the federal government decided to go in that direction.

The second procedural suggestion concerns the recruitment of women and visible minority groups. They have always been underrepresented in appointments to Canadian superior courts. We therefore suggest that the nomination advisory committee adopt a practice of encouraging the recruitment of qualified women and members of minority groups.

The third aspect of the committee we would like to comment on is its legislative status. It would be open to the province to establish such a committee on an informal basis. However, we believe it would be better if the committee were enshrined in legislation. This would lend the support of the Legislature to the procedure and thus accord to it greater legitimacy in the eyes of both the public and the federal government.

In the Public Interest Advocacy Centre's submission, the proposed committee would effectively avoid the risks of deadlock, patronage and the exclusion of Federal Court judges. Any provincial list composed of nominees put forward by such a committee would leave only the smallest of politically safe openings for the exercise of the federal veto.

A nomination advisory committee thus composed would also protect those individuals nominated from any suggestion of partisan bias. Indeed, it would open up the process for those qualified candidates who were actively involved in politics and who would otherwise be seen to be too close to the government. It would also provide judges of the Federal Court, at least those from Ontario, with a means of acquiring provincial sponsorship.

The only concern that is not dealt with by the concept of a provincially constituted nomination advisory committee is the exclusion of qualified members of the territorial courts and members of the territorial legal professions from consideration for appointment to the Supreme Court of Canada.

When it comes to something as important as the composition of the Supreme Court of Canada, our choice of candidates should not be artificially limited. We therefore recommend that the government of Ontario at the earliest date following the ratification of the accord, should it be ratified, sponsor an amendment to the Constitution which would provide a mechanism through which members of the territorial courts and legal professions may be considered for appointment to the Supreme Court of Canada.

In conclusion, the provisions of the Meech Lake accord which permit the provinces to nominate appointees to the Supreme Court of Canada provide an opportunity for Ontario to take the lead and set the salutary precedent in the establishment of a fair and strong nomination process. A properly composed nomination advisory committee, established by legislation, would go a long way towards ensuring the independence and high calibre of, and public confidence in, the Supreme Court of Canada.

All of which is respectfully submitted.

Mr. Chairman: Thank you very much. I think that is a particularly interesting proposal on a very specific subject, one which has been put before us as a potential problem by a number of people: how the judges would be selected, if the provinces would simply name party bagmen and the like.

As you mentioned, the Attorney General has been making some suggestions regarding appointments of provincial court judges. We have received as well a copy of the Canadian Bar Association's proposal, to which we now add yours. We really appreciate the specifics, because that is one of the things, in a number of these areas, we are going to want to deal with when we come to our report. Thank you, and we will begin the questioning with Mr. Breaugh.

Mr. Breaugh: You have elaborated on some things we have discussed before. Most of us are now aware that the Supreme Court is taking on a different role, having mostly to do with the basic idea that we now have a Constitution and that there are rights which will be interpreted by the courts in a way which is a little different from what courts have previously done in this country.

Most of us are looking for some kind of system, such as you have outlined here, not just as a means of trying to determine that these people who would be appointed would be eminently well qualified but as a means of knowing a little bit about them. Many of us would advocate--at least, I certainly would--that that is going to take on increasing importance as constitutional arguments continue to go before the Supreme Court, and Supreme Court decisions really have a major impact on the way that the federal government and the provincial governments conduct their business.

You stop short, and were rather critical of the notion of some kind of--well, you are basically making the argument that you ought to do a preselection process and then leave it alone. Could you elaborate just a bit on why you rejected the notion of any kind of confirmation proceedings? I am intrigued by that. I think many of us on the committee have taken a look at what the Americans do in the way of confirming.

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They actually, in my opinion anyway, do both. There is a great deal of preselection work done and there is a huge elaborate process at work to kind of work up the names of who might be appropriate nominees for a given position. But then they also maintain that you must have some kind of public confirmation process after the fact, that the best preselection process in the world does not do its job well unless you have a public face to that, and that is some kind of a confirming process. They seem unconcerned about the notion of deadlocks and things like that.

I think history kind of says they are right. Although it looked like, in the Bork case, for example, the president's choice was not going to go anywhere and that there would never be a solution to that, there was in fact a solution to it. It did work its way through the system. I would be interested in hearing why you stayed away from the notion of a confirmation process.

Mr. Bell: We have not specifically addressed our minds to the merits of a confirmation process and we take no position on it. It is a matter for the federal government, I think, to decide on. At this stage, which is the provincial nomination, we think it is not an appropriate stage for a public examination of the potential candidates. We have no serious opposition to a public confirmation process by the Parliament of Canada or a committee of it.

I think the nomination advisory committee would help in removing some of the weaknesses we see in the American system. In the American system there is no prescreening provided for, with the consequence that unsuitable candidates

get nominated, with predictable results. As we say in the brief, there is a better way to eliminate the unqualified than the political stoning to which candidates are subjected in the US. I believe that kind of process simply discourages highly qualified candidates from putting their names forward. Who would want to subject himself to the kind of excoriation that Judge Bork, for example, recently went through? No doubt there would be those who would not mind, perhaps whose vanity was greater than their self-respect. But we would not get---

Mr. Breaugh: Present company excluded.

Mr. Chairman: You are still aiming for a judgeship.

Mr. Breaugh: I am hanging in there.

Mr. Bell: We would not get the highest qualified candidates that way, but I think that with the nomination advisory committee a public confirmation process would be hard pressed to reject or even seriously question a person who had gone through that initial screening process. I think there are advantages to having these people out in public and having them questioned about their views on particular issues. I think the public needs to know who these people are. Even perhaps some of the guys in the truck plant in Oshawa would like to know.

Mr. Breaugh: Let me pursue that a bit because a number of us have looked at how American jurisdictions go about this. The first thing many of them would say is that they do a very extensive preselection process. It is not a public one, but they are very concerned about the background, the qualifications, what people have done. They are very aggressive, far more so than we ever would contemplate in this country, about field investigations, income tax returns, what you did last year, where you got your law degree, how you practised law, all kinds of things. They really do turn their whole bureaucracy loose on this kind of stuff. The Federal Bureau of Investigation agents get right out there in the field and knock on the doors. They do a lot of that. I think they would argue that they do a preselection process, which may be not a public one, and is not put together in the way you suggested, but it probably does all of those things.

The other side of their argument is that they must have some kind of public confirming, that there must be a process which the public can see. Their basic argument is that if this person is going to screw up, they would rather have him do that in the middle of a confirmation hearing than sitting on the bench a year from now when there is no chance to kind of remove him. Their basic argument is that once you put someone into a position of trust of this kind, and it really is, it is virtually impossible to do anything about it. Once you have made your decisions, if this person goes to the Supreme Court he is there until he croaks, and that is game over.

I am not thrilled with the process but I begrudgingly admit that their process of a public confirmation by a joint committee, or whatever, of the senate, or in our experience perhaps a committee of the House of Commons, would do some public confirmation process. I am not afraid of that. It seems to me, although we have used words like a public stoning of a particular candidate, it does seem to me that, if I am going to put someone in a great position of trust, it is not unreasonable to ask that person to go through some kind of public confirmation process. Basically, I am accepting the American argument that, if they are going to foul up, I would rather have them do that in front of a committee of the House of Commons, before we put them on



the Supreme Court, than two years later when they are an august member of the Supreme Court and we cannot do anything about it. I would be interested in your response to that.

Mr. Bell: I agree there is a lot to be said for that approach and we do not oppose the public confirmation process. I think there are some weaknesses in it and it may just relate to the American system, I do not know. There certainly is a large degree of competition between the executive and the congressional branches of government, which I think tends to lead to the appointment of some mediocrities who might be acceptable to both sides. I think that, without naming names, there are a number of them who have been appointed over the years as a result of that.

Now they may not corrupt in the big sense that you talk about, but if they are not making a real contribution to the credibility of the courts, or to the advancement of the law, how do we deal with that problem?

Mr. Breaugh: The only hesitation I have, about suggesting that a House of Commons committee does this confirmation, is that I am not so sure that the Canadian psyche can handle this yet. I know several lawyers who would go absolutely bananas if you suggested for a moment that there had to be a public confirmation process. They would think this just awful, degrading, and certainly not the way we do it in this country. I am not quite sure how Canadian politicians would react to it either. The Americans have used this system for a long time and it is part of their process. I am uncertain as to how a federal committee would cope with this. I would imagine that the first few confirmations would be very dainty affairs. I am not sure about that.

Mr. Bell: I would think it would be something we could probably get used to. As you may be aware, a public confirmation process was recently proposed for appointments to the federal court, in Bill C-235, and there did not seem to be much of an outcry about that. Of course the federal court has kind of disappeared from public view and nobody really cares about it. I suppose that might be the answer, but it is not without precedent.

Miss Roberts: I have a question that is very brief.

Mr. Chairman: Do you want to declare a conflict of interest first since you are a lawyer?

Miss Roberts: Yes, but I do not think I am on anybody's list.

Interjections.

Miss Roberts: No, I am a politician, I cannot be competent. Unfair, truthful but unfair. With respect to your comments about the committee that you are suggesting, are you suggesting that would be a committee that would meet on a regular basis and that a list of 10 names might be required, or 15 or 30 names?

Mr. Bell: The way I saw it, it would exist and it would not necessarily meet on a regular basis, but it would meet at the request of the Premier, who would ask for one, two, three or four names. The committee might have developed procedures by which it would have a store of names, or it could then initiate the process at that point. I think it would be up to the committee to decide how it wanted to handle it, but it would react to a request from the Premier.

Miss Roberts: I see. Then you are not suggesting that a list be set up and that there always be 10 names available to the Premier of the province?

Mr. Bell: No, I think that is something that could be worked out as we go along.

Miss Roberts: Your other comment with respect to the second last page, getting lawyers or judges from the territories somewhere into the Constitution. How would you suggest that be done? What amendment would you suggest to make that change?

Mr. Bell: That is a good question. As you found in the brief, we did not take any position on that. But, like most lawyers, I believe that everybody is entitled to my opinion. I think some combination of federal-provincial representation could be devised which would allow for nominations from the territories before they achieve provincial status.

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Miss Roberts: But you said, "would allow for." I would assume that you would say it should almost demand they be there, because it is allowed for now, except that politically it might not be done.

Mr. Bell: I think that is why we need an amendment to the Constitution, to provide a process which would allow for it, which would require it, yes.

Mr. Chairman: Mr. Bell, thank you very much for your presentation. I think you have raised a process question around one of the items of the accord that is very interesting in terms of demonstrating to people that there would be a fair process in terms of the choice of judges. I suppose it is something which Ontario could proceed with or with some similar system which, if we were doing it, could then serve as a potential model for other provinces to use or certainly put pressure on other jurisdictions to open it up, if they wanted to continue to keep it closed.

I thank you very much, on behalf of the committee, for the various proposals, the approach and detail you have put into that.

Mr. Bell: Thank you for hearing me. Good afternoon.

Mr. Chairman: I now call upon the representatives of the Native Council of Canada: Louis "Smokey" Bruyère, the president; Chris McCormick, the past president; and Robert Groves, special adviser, I believe. Gentleman, if you would like to grab a cup of coffee or a glass of water and join us at the front table.

We thank you very much for coming this afternoon. We apologize for running a bit behind, but that will not interfere with our study of your comments and the questions that will follow. Perhaps with that, Mr. Bruyère, I could simply turn the microphone over to you. If you want to lead us through your brief, we will get into questions at the completion of that.

Mr. Bruyère: Sure. I am running a little bit late myself. I just got in from Calgary.

Mr. Chairman: Well, we are glad we were late, too.

Mr. Bruyère: I left somebody out at the airport to pick up my luggage and bring it downtown. I did not realize, in terms of the time schedule you have, that it is only an hour or half an hour to the groups for their presentation.

Mr. Chairman: We exercise a liberal approach. Right?

Mr. Breaugh: They cannot tell time, either.

Mr. Chairman: Only in Oshawa.

Mr. Bruyère: I guess the presentation will be presented as read into the minutes. What I will do is just summarize it as I go through it rather than reading the whole thing.

Mr. Chairman: This will certainly form part of the record of the meeting. In fact, both your documents will.

#### NATIVE COUNCIL OF CANADA

Mr. Bruyère: You received in advance our paper entitled Companion Resolutions. This paper has now been in the hands of premiers and the Senate for some months. I know you are interested in hearing more about our proposal that the Ontario provincial Legislature initiate or support several companion resolutions to alleviate some of the critical shortcomings and imbalances that could result from the proposed Constitution Act, 1987.

The aboriginal reform process from 1983 to 1987 was based on an understanding: aboriginal matters were number one, the first round of reform. It was assumed that concerted effort would be given by all first ministers until the basic issues were resolved. Section 42 also provided an agenda of other reform items that could be addressed, but we were assured that we were the number one priority of Canada. Aboriginal peoples were, finally, to get top billing. Aboriginal people felt assured they would get a secure place in Confederation. Clearly, we were wrong, all of us.

The Meech Lake accord proposes to cut the aboriginal rights provision and forestall, possibly for ever, the completion of the circle of Confederation just when we were getting close to an understanding and making a breakthrough. The first three meetings in 1983, 1984 and 1985 were spent largely in educating Canadians and Canadian politicians. So, in fact, we only had really one shot at serious and informed discussion on reform, and that was pre-empted by preparations for Meech Lake.

You must remember that the Prime Minister asked all premiers in August of 1986--seven months before the last first ministers' meeting--to put all reform matters on the back burner until Quebec's five demands were addressed and resolved, so there was really no possibility of movement in March of 1987. We had been pre-empted.

Northerners, totally unrepresented in the meetings, have lost any real chance to become provinces. They remain fiefdoms. If they do seek provincehood, then they would be held to ransom and blackmailed for part of their homelands and for their right to participate fully in the Constitution. This is a virtual certainty under the accord.

Logic tells me that to apply unanimity to things that do require reform is to invite major trouble. Either those reforms will not happen or someone is



going to have to pay, and pay big. I have already told you how I think northerners will have to pay under unanimity.

I am not surprised that Brian Mulroney thinks seven out of 10 is good enough in Baie Comeau on free trade. He knows how rare the Meech Lakes of the world really are. So why did he allow it to be imposed on the north?

What holds for free trade also holds for aboriginal rights, Mr. Mulroney said. It appears the other first ministers have not really grasped the reality of the special relationship that the national Parliament has with aboriginal peoples. The Constitution clearly provides that, if and when necessary, the federal government can exercise a tremendous amount of autonomy in protecting aboriginal rights, up to and including amending the Constitution through treaties and land claim agreements.

We all know that provinces are necessary players if self-government is to be effectively implemented. That is why we have been using the seven-and-50 rule for the last five years and that is why the aboriginal reform process was written into the Constitution the way it was. The first ministers have now allowed that process to die. This simply highlights how imperfect their grasp upon the intent of the Constitution really is.

You must remember that the aboriginal reform process was put into the Constitution for the reason that it was too complex, important and controversial to leave to ad hoc processes. Without a formal process, little would be accomplished since at least some governments had a vested interest in avoiding action.

Now, what about the argument that the lack of success on self-government over three conferences means that a formal process is not the best way to address the issue? This line of thinking is very revisionist and ignores history. Aboriginal leaders agreed to facilitate the patriation process on the condition that there would be constitutional guarantees, that our rights would be identified, defined and included in the Constitution. Section 35 was put in as the basis for a full charter of aboriginal rights.

Contrary to what Senator Murray's version of history would have, the Native Council of Canada did, in fact, table a draft amendment--in effect, a charter of aboriginal rights--at the beginning of the process in 1983. Aboriginal leaders, again in an effort to compromise, agreed in the short term to narrow the large number of items in the Charter of Rights and Freedoms down to the item of self-government. This was done at government request. Now, we find that all items--self-government included--are pushed off the national agenda. The 1983 constitutional accord has simply been ignored.

Some of you know that the federal government shut down our capacity to work on constitutional reform last June by cutting off all our funding. The all-party joint parliamentary committee on Meech Lake recommended immediate resumption of that funding and a resumption of talks to put in place an agenda and a schedule of talks on a self-government amendment. Even with that kind of support, we have not been able for over six months to get either a response from the government on the funding issue or a meeting with ministers to discuss a new proposal that all aboriginal leaders have agreed to in order to renew efforts for an amendment.

As some of you know, Mr. Turner last week made another forceful statement on this issue by announcing that a Liberal government in Ottawa would not only support a meaningful recognition of our inherent right of

self-government, but would call a first ministers' meeting on this matter within six months of forming a government.

As to premiers, the response to our initiatives over the last year has not been encouraging. Mr. Peterson has avoided any specific commitment, although he has indicated that he will raise the issue of resuming aboriginal reform discussions when first ministers next meet, supposedly in June. Our view is that suggestions are just not good enough. The time has come for action, and that is where the companion resolutions come in.

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You have all had a chance to look at the companion resolutions option. We have been raising this idea for almost 10 months now, and the paper we have provided tries to flesh out, in concrete terms, how it should be implemented. All that the approach asks is that the legislatures of this country fulfil their constitutional duty and defend the clear interests and rights of aboriginal peoples, people who were the first citizens of Ontario, as in all other provinces in Canada.

The means to carry out this task is straightforward, it is legal, it is without pretence. I am asking provincial legislatures--and failing them, the Senate--to start the ball rolling. It will be left to others to see through the course you set if you choose to initiate, but the task cannot be started, let alone completed, without the initiative and support of legislatures. After all, is that too much to ask? If you look at the Constitution of this country, it does not say that first ministers have the charge of constitutional reform; it says that legislatures have that responsibility.

What does the companion approach ask? The proposal asks legislatures, the Senate and the House of Commons to pass resolutions to reinstate the aboriginal rights procedure that was terminated last year, and it asks you to do this now, while there is some realistic possibility of getting broad acceptance of such a change.

The companion approach also asks you to correct the disfranchisement of northerners in the Supreme Court nomination process. It is important to note that the accord actually strips northerners of a right they have under the current Constitution. That is the essential reason for this amendment, to undo disfranchisement in a way that does not open the accord itself for amendment.

Finally, you are asked to put an end to an antidemocratic and colonialist imposition of the unanimity rule on the territories. This is the toughest one of the lot and it may not fly, but we feel it must be at least initiated. If it does not make it, then at least the revived process triggered by the first companion amendment could address it in public.

With that, I will leave it and answer any questions you have.

Mr. Chairman: Thank you very much, both for the submission and particularly for the option and the companion resolutions, which are certainly set out in very clear form, and not only that, but also in the two languages. As you noted, you have had that out for some 10 months. I guess, as a committee, it was first brought to our attention in some detail by the Metis association that was before us perhaps a month ago. It is certainly an interesting and innovative approach that we want to follow up on very carefully.

Mr. Breaugh: To be blunt about it, you know that the committee has a bit of a political problem in that the Premier has said he does not want to hear any of this amendment stuff. So part of what we have been doing in the course of the hearings is searching about for options that would not break anybody's word and would not offend people.

It strikes me that this concept of companion resolutions fits very nicely into that mould of things. Nobody has to go back on his word. It seems to me there is a very clear, straightforward approach that can be taken here that is not going to offend any of the premiers, at least, or the Prime Minister, or should not, in my view.

The only concern I have is, having had a chance to look at them now, do these companion resolutions really go far enough? You are kind of the sponsoring agency here, so I just want to give you the chance to put on the record today any kind of reservations you might have, because I think we have had a little difficulty, particularly with aboriginal groups, determining exactly what they are after here. Not everybody is speaking exactly the same language nor asking for exactly the same things. The range is from groups who have--

Mr. Bruyère: Like those around this table.

Mr. Breaugh: Yes, we all have different opinions on things.

Some groups have been in front of the committee and said basically, "We don't really give a damn what you do; we're going to court, and that's not affected by any resolutions you pass or anything else."

I like the idea, to tell you the truth. It seems to me that this is one of those things where we have found a mechanism which in a sense is face-saving, no one has to go back on his word about the Meech Lake deal, but it allows us to handle what we consider to be very legitimate problems in a way that is palatable.

Does it do what you want it to do, or do you have reservations about it?

Mr. Bruyère: What we would like to see is the Constitution Act changed the way we want it.

Mr. Breaugh: Join the crowd.

Mr. Bruyère: Exactly. So in that sense, to answer your question, no, it does not do what we would like it to do, but it goes in some measure to satisfy what we consider to be at least appropriate to put in the Constitution at this point in time and then allows you other first ministers' conferences to bring out the rest of whatever you want.

I say that in the sense that this paper was initially brought forward by the Native Council of Canada some 10 months ago. We circulated it among all the aboriginal groups in Canada and got agreement, basically, that this was the approach to take; not necessarily the only approach to take, but it was an approach to take. So we started pushing it.

We met with the Senate and the Senate was quite excited about it. The chairman of the group, Senator Molgat, said, "How come, with all the experts we have in this country, nobody else has come up with this idea?" It is something that the Senate can initiate. Since 1982, it can do this. It has



never done it before. It would be precedent-setting. What concerns a lot of premiers is that it would be precedent-setting. They do not like to see that happen, but it is a possibility that it still can happen through the Senate.

What we would really like to see, so that it has some real meaning to it, is that it comes from a province. When it comes from a province, the Senate can legitimately say that it is not acting on its own in the sense that it is not going above and beyond what it normally should do. In terms of the law of this country, it has the right to do it. Regardless of whether some Legislature does it or not, it can, but it would be nice to have a province start the process.

Mr. Groves: Perhaps I can just follow up on two specific points.

One is the court issue that has been raised many times. I think you have already heard testimony that there is an issue with regard to whether or not section 35.1 of the Constitution has been triggered by the Meech Lake accord. Essentially, that provision is a political commitment. It politically commits the governments of the provinces and the federal government to have a first ministers' conference with aboriginal leaders prior to the amendment's passing.

The concern that has been raised is because of, basically--one can argue sloppy or deliberate, it is difficult to say--the drafting of section 16 of the accord with regard to the noneffect of section 2 on sections 25, 27, 35 and 91.24 of the Constitution; two of them in the charter, two of them outside the charter.

The question is raised because it does not refer to part II being exempted; it refers to subsection 35(1). Part II includes section 35.1. Section 35.1 is therefore technically not exempt, either from section 2 or, more important perhaps, from section 50, which is the new process. That could give rise to an effect or a change in the constitutional nature of part II, which could require a first ministers' conference.

That is there. That is an option, the court option. Frankly, a first ministers' conference is going to be required anyway. The Prime Minister has said already that he is going to hold one. What he is doing is holding aboriginal groups hostage to when that might take place. What he said is that when their conditions are conducive to success, he will announce the date for a first ministers' meeting.

Yet as Mr. Bruyère has pointed out, for almost a year now aboriginal groups have been working from their end to put the conditions conducive to success, but they are not even allowed to actually promote bringing into place those conditions because of the attitude of the federal government, which is to shut down all discussion on the whole matter.

The second issue is on the range and scope of the companion resolutions. Why do we not do this for everything, all the issues that have been raised? In the presentation--it was not read in--you will find some of the answers to that. I think there were four basic reasons.

First, a limited number of amendments obviously is preferable to a large number, simply because the ones that are more important get lost in the rush. You can make only so many trips to the well. That is one issue, although technically I should point out that these three companion amendments and any others, if they are companionable, are separate amendments. In other words, they are not voted on as a single package so that if opposition to one of the

amendments is present, the others die. They would be presented as quite separate companion amendments. You would have three in this case, three votes, three initiated resolutions, because they do involve three separate procedures.

The second reason is that there should not be any reasonable opposition to the ones that you are advocating, "reasonable" being that there is a reason to oppose them. With these three, we have found no one willing to say that he is opposed to them. No one was willing to get up publicly and say, "We do not like the effect of these resolutions."

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Third, there must be no reasonable doubt about their objectives or their effect or necessity in the Constitution. That is one of the reasons, for example, that one amendment has been very much sought by the Native Council of Canada and other groups, to balance the "distinct society" clause with recognition of aboriginal societies as being distinctive and also to promote and preserve them to overcome the two founding nations myth.

That could be done and it could even be drafted as a companion amendment, but would it have a certain, clear, known result? The answer is, unfortunately, in terms of companion amendment strategy, no, because we do not know what the result of section 2 of the accord is and you would not know the result of introducing an equally uncertain amendment. Again, it does not meet that strict test of companionability. It will be something aboriginal groups will be pushing for in the next round. The question is, will they ever get a next round? That is what number one is aimed at.

Numbers two and three are aimed at equally clear, precise, known-effect changes that no one has really opposed. No one has stated he has opposed.

Finally, as I have said, they must not compete. They must be companionable. They must be drafted in such a way, presented in such a way, that Quebec does not have to go back and restart the whole process, and Saskatchewan and Alberta do not have to go back and restart the whole process on the accord and this legislative committee does not have to go back and start all over again. You continue on and you dispose of the accord as a separate matter. These are linked, certainly politically and also in terms of time, but they are not legally linked in terms of offsetting the so-called seamless web argument about the accord.

Mr. Breaugh: There are a couple of other things I think it would be helpful if you would comment on. There are many of us who felt an agreement was very close at the last conference on aboriginal rights, that with a little more persuasion and a little more time, something would have happened, but nothing did.

I am perplexed as to exactly where the federal government is on this. I get different messages, some saying, "They have basically withdrawn funding and we are supposed to kind of dry up and blow away," and others indicating, as you have done, that there is a little game being played about the timing. The temptation is to work the process in a way that says, "First call another first ministers' conference and deal with this aboriginal rights question, and when you have done that, then come and see us about ratifying the Meech Lake accord." That temptation is there, but it does not really tell me how they are going to deal with the aboriginal rights question.

I have not heard you say that you want something like that attempted. Other groups have. Some have said by 1992 and other groups have said: "What the hell has 1992 got to do with all this? We have been around for a while and we will be around for a while longer. Timing is not that important." I take it from what you have said today that now you have basically settled, at least your group has settled, on the idea that you will do the companion resolutions routine. That is your preferred option and you would like to see that given priority by this committee.

Mr. Bruyère: That is certainly one of the reasons we are here. We see it as being necessary because there is no other way out at this point in time. In terms of what is actually there and having the first ministers' conference before they ratify the Meech Lake accord, it would be preferable, but it is not necessary if this kind of thing can happen. If we had another first ministers' conference tomorrow, I do not think we would be any closer than we were last March to getting an agreement, simply because, at the last first ministers' conference, the Prime Minister was not prepared for an agreement.

If you look at how the Prime Minister dealt with all other first ministers' conferences in this country, he has always put forward his position first. At this first ministers' conference, he would not do that, and we, the four aboriginal leaders who met with him, asked him quite specifically the night before to put his position on the table so that the provinces and the aboriginal groups would have something to respond to. He said, "No, what we would like to see first is where the provinces are coming from." We told him: "Then it looks like an exercise that is doomed to fail because you are not putting your position on the table. You are not coming up front with the rest of the country in terms of the possibilities that you can see happening." From that moment on the conference was doomed in my view. Nothing was going to happen.

The only way it can happen is if the Prime Minister of this country comes out and says what he would like to see the provinces agree to with the aboriginal people. He got off quite easily by coming out with a draft amendment that went some way to satisfying some of the provinces and satisfying some of the things the aboriginal groups wanted, but he knew the provinces would not agree with what he put in there for the aboriginal people and he knew the aboriginal people would not agree with what he put in there for the provinces. That was a known. Still, that is what he came out with at the last minute when the conference was doomed to fail. The last afternoon, before things shut down, he came out with his proposal and it was not going to go any place at that time.

Mr. Breaugh: Just to stop you there, as an observer of that conference, I saw a lot of people playing: "After you, Alphonse. You show me yours and I'll show you mine." It would be nice to know that we all got on the same track this time and that we had one common goal. If in the final result that were to be these companion resolutions, we could all push on the same side of the wall for a change and maybe we might get somewhere, but I think most of us are going to be real upset if we decide these companion resolutions are real good and we are very interested in pursuing this, and having done that, we find another voice or two saying, "Yes, but that's not what we want." I am just trying to fish out here--

Mr. Bruyère: You are going to find that regardless of who you talk to, what race of people you talk to.



Mr. Breaugh: It is not that we are not used to that.

Mr. Bruyère: I realize that. You should be used to that. That is reality. You are dealing with people and people are the same no matter where you go. Everybody has his own opinion and everybody has organizations to represent him in that sense. Organizations are built because of what people's beliefs are. If you happen to live in the city of Toronto, you have a different belief than I would have, coming from Atikokan, in terms of how the government should react to the concerns you have in your community. That is only normal. You cannot expect everybody to come under the same umbrella and be satisfied with it. You yourself, as a party member, certainly are not satisfied with what the Liberals are doing or with what the Conservatives were doing.

Mr. Breaugh: Amen.

Miss Roberts: Or even the NDP.

Interjections.

Mr. Breaugh: Let's hear it for the Supreme Court. You're on.

Mr. Bruyère: Why should we be any different? Why should we all say we are going to agree on everything we say? It is only normal that you are going to have differences.

Mr. Breaugh: I think we are not afraid of differences of opinion. What we are concerned with is that this concept of companion resolutions fits nicely within our own needs as a committee to do something to resolve a problem. I think we are all in agreement that something should be done. This would appear to get, if you will excuse me for saying so, my Liberal colleagues off the hook. They will not be banished to the back benches for life, just for 10 to 20 years, so it might be a useful thing to pursue.

Mr. Cordiano: We are there already.

Mr. Breaugh: No need for a mea culpa, Joe.

Mr. Groves: Perhaps I could just respond to one line of your question. First of all, on the companion resolution, the first one on the first ministers' conference process, it is a process resolution, a process answer. You are resolving a substantive problem through a process, so that is one of the reasons it has broad support among aboriginal peoples. There may be bickering about whether it should be every three years as opposed to every five years, or whether it should be one year.

For example, to the principal companion resolutions, I think the national chief of the Assembly of First Nations has said, "Yes, if we can't amend the Meech Lake accord, companion resolutions are the next best thing to do." The Innuit have basically taken the same position, so you have broad support for the vehicle.

There is going to be debate, as I said, about one, three or five years. We have suggested five years simply because, frankly, we have to keep in mind Saskatchewan, Alberta, British Columbia, Newfoundland and so on.

As to what happened last year, it was Newfoundland more than any other province that played the game of, "After you, Alphonse." In fact, they did not

even play that. They took the position up front, before the meeting even began, that they would not allow anything to proceed on aboriginal self-government until they had agreed that fisheries would be on the next agenda.

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They all knew, of course, that Meech Lake was coming along. We all knew it because we had asked to be observers at the deputy ministerial level meetings on it. We were almost invited. Manitoba agreed to sponsor the idea. It was shot down by several other delegations because of the close association between the effects. In fact, if you look at the amendment on immigration, it begged, borrowed and stole from much of the work on the aboriginal side of it. I think Senator Murray has now admitted that in print. He is quite happy to admit it.

The wording of the number one amendment is actually based on a Nova Scotia proposal that was taken to the first ministers in April and then again in June. It did not make it to the table, largely because there was a sense that if one more thing came on that table, the whole table was going to collapse at three o'clock in the morning, as it were. At the time, however, Ontario, Manitoba--we had assurances from Prince Edward Island and New Brunswick that they had no opposition whatsoever to adding it in.

It builds upon what has happened since 1981-83. It is very consistent with what the Constitution has had in the past and its process provision. The only difference from the previous process provisions is that it is a permanent one. But of course, as we realized in Meech Lake, there is nothing permanent in the Constitution. As long as you can get the 11 first ministers together, they can change it, even only eight of them.

The added value of this is that they can do that, sure, but they have to have a first ministers' conference first, publicly, with aboriginal leaders to say why they are going to eliminate it. What has happened is they have eliminated it in secret, behind the doors. It has just been wiped out. This puts the process back upon the agenda.

Mr. Morin: Is there anything in the accord which could preclude the Prime Minister from convening the first ministers' conference to address aboriginal rights as may be necessary? Is there anything in that which prevents him?

Mr. Bruyère: There is in the sense that in order for the Prime Minister to call a first ministers' conference on aboriginal issues under the present system, if the Meech Lake accord is accepted, you have to have all the premiers agreeing. If you just have one Premier not agreeing to it, there is no meeting.

Mr. Morin: If he wishes to have one.

Mr. Bruyère: He can have it, but if one Premier does not show up or one Premier disagrees with it, then nothing happens because under the unanimity rule they all have to agree.

Mr. Groves: It raises an interesting question. If such a conference were to be held, and the Prime Minister decides he will not call it a yearly constitutional conference or he will do it in addition to the once-a-year or twice-a-year first ministers' conference--there is one on the economy and one

on the Constitution--if he could do that, then you would have three first ministers' conferences in the space of one year, a highly unlikely event because of the preparatory work required for a first ministers' conference. Also, if there is going to be a constitutional conference, other premiers are going to insist that it be considered under the agenda provision, section 50.

The question has been raised that if it is unanimous consent for adding agenda items, does that not give Premier Peterson or some other Premier leverage to go in and say, "Look, goldarn it, I want aboriginal issues on the agenda, and if I do not get them on the agenda I will not have anything else on the agenda."

In fact, there is some precedent for this. Premier Blakeney in 1981 effectively did that with women's equality. With all the pressure between early November 1981 and late November 1981, when women's sexual equality rights and aboriginal rights were dropped from the constitutional package, all the premiers decided, "We have to get sexual equality rights back in." There were still three provinces that refused to move on the aboriginal rights clause. Blakeney basically said, "If you do not go for the aboriginal rights clause, we are not moving on the sexual rights clause and the whole thing will collapse."

He has been blamed by women's rights groups for a long time for being anti-sexual-equality. It was not the case. He was trying to hold one to the other, ransoming it. It worked. The three provinces opposed to it did back down. The question is, would that happen again? If it is not unanimity, maybe it is consensus. If it is consensus, you cannot really have that kind of agenda blackmail going on. It is much more difficult for a Premier to go in and demand his own item at the exclusion of others if you are talking about consensus. Either way, it is an extremely difficult situation if you have two, three or four provinces opposed.

Mr. Allen: I am not sure I hear what you are saying, but I do not see where you justify that on the basis of the Meech Lake accord. We have had some hint that some people might consider that aboriginal self-government, for example, as the most extensive claim possible, might conceivably come under section 91, class 24, and therefore be an amendment to federal institutions, but most experts do not think that is the case. I do not see anything in the list of unanimity items that pertains to the agenda of first ministers' conferences, so where are you coming from?

Mr. Groves: What you are taking me to say is that if it means unanimity, then the setting of the agenda of the first ministers' conferences on the Constitution would be placed under section 41, or the new section 40 of the Constitution Act, along with the creation of provinces in the territories and elsewhere.

It is an interesting point because if it is not unanimity, if you take that argument, then it must be the general amending formula which is two thirds of the provinces. It must be, in all cases of agenda matters; it must be the general amending formula. That is even in an area where the amendment involved only concerns one province and the federal government. The same problem I think drives people to suggest that you have to read the accord as a whole because the accord involves three different types of amendment procedures.

It rolls them all under one and uses unanimity for all of them, even though unanimity is not required for some of them. You have to take that into



context, that and the fact that premiers, many of them, think that in fact unanimity does apply because it says "as agreed upon." By whom? By the premiers who agree upon this accord, all 10 of them, plus the Prime Minister.

You are right that it is going to be debatable. It is going to end up in the courts, it seems to me, because of that very fuzziness. There is no real way of telling how, but it probably will not be less than two thirds, or there might be some sort of dubious consent rule. If so, we are back to square one without the formal process being there, locking all first ministers in at least to having to meet publicly on the issue on a regular basis, as they have been doing. Then you can be nickel and dimed on this issue from here to doomsday.

Mr. Chairman: We will now move to a nonsupplementary question.

Miss Roberts: It might be a supplementary, Mr. Chairman; I am not sure.

Mr. Breaugh: But it will be brief.

Miss Roberts: It will be very brief.

I think the important comment that I am hearing from you today is that if we cannot open the Meech Lake accord, then the important thing is to get Quebec in as a part of the Canadian Constitution, at least get that particular round over, so that when you do go back, if indeed a companion resolution or some other type of amendment is set out, you are talking to 10 instead of nine. Is that not correct?

Mr. Bruyère: It is and it is not because Quebec was at all first ministers' conferences on aboriginal issues. The Premier was not there, but he always had his ministers there. Quebec was never out of the Constitution. It was always a part of it. They just did not recognize it; that is all. There was an amendment to the Canadian Constitution without Quebec, and in the same sense there could be an amendment without Quebec at this time.

We are not arguing against Quebec at all. What we are arguing for is for people to recognize that the aboriginal rights issue is just as important as the Quebec issue, if not more important, because Quebec was and always has been part of the Constitution, whereas the aboriginal peoples have not been.

Miss Roberts: Is it not to your advantage to have Quebec in as a full--whether or not it is in or out is not the question; it is what it thought it was and how it acted. You can argue the legal points of it from now to doomsday.

Mr. Bruyère: If you look at it from past experience, in terms of the aboriginal rights issue, of having Quebec in, Quebec has always been blamed because it was not part of the Constitution in terms of the aboriginal rights. Quebec was always blamed by other first ministers, saying, "We cannot make any agreement because Quebec is not here." But when you look at how Quebec has treated the aboriginal peoples in the past, I do not think we have very much to look forward to by having Quebec there.

If you look at the James Bay agreement, the federal government and the provincial government in Quebec have not lived up to the agreement to date. That is why they are in court. What have we got to look forward to with having Quebec there?

Miss Roberts: It is not helpful to you.

Mr. Bruyère: It is not that it is not helpful. It is just that it is not going to make the process any easier.

Mr. Groves: It could be very helpful to have that extra first minister there because it does break a logjam which has occurred about self-government. Saskatchewan has in the past found itself in the make-or-break position. Premier Devine has thought he is in charge and largely through abdication by the federal government, he has been put in charge. That would displace Saskatchewan, if Quebec were in, because Quebec is not Saskatchewan; they have different views. However, it does not automatically say things are going to be any easier. An amendment was made without Quebec.

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It should be pointed out, interestingly enough, that Premier Lévesque showed up for every first ministers' conference. Bourassa did not show up at the one just prior to the Meech Lake meeting, apparently because of a scheduling conflict, he said, but it is debatable why. The real issue becomes, "That's all very well and good," but is that not just a reason to argue, "Wait until 1990. Wait until the accord is in place. Then you have our solemn commitment," which we do not have from any premier, let alone Mr. Bourassa? We talked to him last May when they had hearings on Meech Lake. We do not have commitments such as: "We'll do something for you. We'll have a first ministers' conference that will be supportive." We do not have those commitments.

Very few premiers, unfortunately, are willing to give that kind of upfront commitment unless the kleig lights are on, unless the process is required. That is why we had movement in 1984, we had agreement in 1984. We got very close, as you indicated, Mr. Breaugh, in 1987. We were very close because of substance. We were not very far apart. What happened was that the whole process fell apart because Meech Lake was banging at the door saying, "Let us through."

Miss Roberts: That is my point, that Meech Lake had become more important because of the fears of what happens to the nine provinces and the 10th that does not feel it is a signatory to it.

Mr. Groves: That is why companion resolutions are the approach we are taking; we have to recognize that reality. But they are companionable. They are not post-Meech Lake; they are tied to Meech Lake.

Miss Roberts: The other question is with respect to funding. I assume, and I am not too sure about this, that you have had no funding from the federal government and no indication that funding is going to be forthcoming until--is there even an "until" setup?

Mr. Bruyère: Not at this point in time. All we have to date is the Prime Minister saying he will convene a conference when it is conducive to success. We went as far as having a conference ourselves, among the four aboriginal groups, in January of this year, sending a letter off to the Prime Minister saying, "This is the way we'd like to see things take place." It follows what took place in terms of the Meech Lake accord. They said it would be much easier if we followed that process. We did and we have not heard anything. We are getting the response back from the Prime Minister, his ministers and their staffs that nothing is going to happen at this point, so we do not even have the "until" in terms of the funding.

Mr. Groves: They are now even considering shutting down the federal-provincial relations office's capacity in this regard, getting rid of the office of aboriginal constitutional affairs, because they do not see it as being relevant any more, they do not see it as an issue any more. They have adopted the guise of "when conditions are conducive to success," but they have not provided the resources or the political support to get the conditions conducive to success going. It is a real big question.

Ironically, some provinces are continuing to fund the regional organizations, or considering continuing to fund regional organizations for their participation. There is no federal support. What is more than money is the machinery, the bodies, having the contact, the continuity, the liaison capacity there. Without that, the whole process gets very rusty and very hard to start up again when some Prime Minister in the distant future decides the conditions are conducive to success. Perhaps that means it is conducive to success when the aboriginal groups are so battered down and battered that they come crawling to the federal government with a proposal that will gain easy acceptance from BC and Alberta.

Miss Roberts: My problem with respect to success is, what is the success? Is success what they want to have happen, or what would be the appropriate negotiated settlement?

Mr. Chairman: Just as a closing quick question, did you present the companion resolutions idea to Bourassa? Have you presented it to McKenna? Has there been any discussion in that regard?

Mr. Bruyère: With McKenna, we have sent it out to him. We have not had a chance to sit down and talk with him.

Mr. Chairman: He has been busy.

Mr. Bruyère: That is right, very busy. Bourassa has had a copy of it as well. We are going to be meeting with him on April 13 to explore it further with him.

Mr. Groves: I was just going to add that, as I said earlier, this comes as no surprise to the premiers because it is something we have been trying to get going since the first ministers' meeting which met in Meech Lake. Of course, everybody is playing a game right now and saying: "Not us. Get Quebec to do it. Get Ontario to do it." Ontario has also been pointed out as the one to do it because Ontario is kind of the broad shoulders of Canada, as it were, constitutionally speaking. That is true; Ontario has played that role.

Mr. Morin: That is what Mr. Kwinter said.

Mr. Groves: You have played that role. Mr. Davis played that role on the aboriginal side and Mr. Peterson has attempted to do the same, but Quebec of course is appointed. "We will get Quebec to do it because then no one will assume that the initiative is anti-Meech Lake."

That also places Quebec in a very powerful position. As we said, Quebec does not necessarily have an assertive, promotive aboriginal rights position. Witness the shotgun diplomacy that gave rise to the James Bay agreement. The bulldozers were there on your front door and they said: "Are you going to negotiate an agreement or not? If you are not, we are going to continue to bulldoze."



Mr. Chairman: I would like to thank you very much on behalf of the committee for coming here this afternoon. I think it has been extremely helpful to us and very informative. We very much appreciate the two documents and the companion resolutions. We have some way to go yet before we get to our report, but we really appreciate what you have brought to us today.

Mr. Bruyère: If we can help in any other way possible in terms of explaining something further through writing or phone calls, whatever, please let us know. If we can be of any help at all, we will be more than glad to do so. We see our role as trying to get this process going and helping people understand why we are doing it. If we can be of any help at all, please call on us.

Mr. Chairman: Thank you very much.

Mr. Groves: Perhaps just further to Mr. Breaugh's earlier question, there is a little package here trying to explain why other issues are not companionable. That might be of use to the committee.

Mr. Chairman: The clerk will take that and we will have that. Thank you.

If I might, I call upon Professor Richard Simeon, director of the school of public administration at Queen's University. Professor Simeon, I apologize. I guess it always happens to the person who is last in the afternoon. Somehow, we inevitably get behind time, but we certainly will not be taking away from our time with you.

As many members know, prior to your current responsibilities, you spent a long period of time involved with intergovernmental relations. If I have the title correct, I believe you were the director of the school of intergovernmental relations at Queen's. As such, you have been involved in one form or another with all of the various constitutional discussions that have gone on over the last long while.

We are very pleased that you could join us this afternoon. I understand that you have a paper, some remarks. If you would like to proceed with that, we will follow up with questions.

DR. RICHARD SIMEON

Dr. Simeon: Thank you very much, Mr. Chairman. I am really very pleased to have the opportunity to appear before the committee today to give you some of my views on the accord.

I might as well state at the outset that in general I am a supporter of the accord. I gather you have not heard from many of us, so I may at least be a little different. I do hope the committee will recommend to the Legislature that it be approved.

I summarized my general views on the accord before the parliamentary joint committee last summer and, with your indulgence, I will leave that statement with you, so I will not go into much of the detail of the accord itself today. I am also a signatory to a statement by a group of academics from Queen's and other universities, which I believe you have.

What I would like to do in my presentation today is to grapple, and I think that is the right word, with some of the criticisms of the accord which

have appeared both here and in other forums and, in particular, to address myself to two crucial sets of questions which go to the heart of the legitimacy of the accord.

First, what is the appropriate process for constitutional decision-making? Does the process that we have followed here meet our current standards of democratic legitimacy for constitutional policy-making, or is it so flawed really that the results are unacceptable? Second, what is an appropriate standard for judging the outcome of such a constitutional process? What are the kinds of tests that we should apply to the results of constitutional decisions?

I think I should say at the outset that the critiques of both the process and the substance of the accord are indeed very troubling and powerful ones. As I have read them, more and more I have found my own confidence in both the process and its outcome pretty severely tested. I really have found myself wrestling with these issues very much in the past few months.

Certainly, I suspect very few of us would say that this is the ideal way to go about changing a constitution. All of us can imagine better ways to do it. All of us can probably see in Meech Lake elements that we wish were not there, and all of us probably feel that, left to ourselves, we could devise a more ideal blueprint for Canadian federalism, but one that would secure a very broad agreement is a different question.

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My defence of Meech Lake, therefore, is a more pragmatic one. I do not really ask whether it is the best that we could have done but rather, is it an acceptable, workable compromise or not? The question is not, "Is the process ideal?" but "Does it meet our basic standards, and could we imagine in the real world of politics a much better way we could have done it at this time?"

I also do start all my thinking about Meech Lake with the fundamental premise that it really is essential to find some way that is acceptable to Quebec and to the rest of Canada to secure Quebec's voluntary accession to the Canadian constitutional order. Certainly, I see this as the Quebec round; I see that as the great achievement of the accord and that is the characteristic of the accord which we would really not want to lose, although it has to be done, of course, in ways which are sensitive to our other constitutional values.

The pragmatic question becomes, is there another way in which we could have secured this Quebec accession, and is the way we have done it such an affront to other values that it should be rejected anyway?

My own feeling is that the recognition of Quebec as a distinct society we find in the accord--and that, of course, has been the sine qua non for all Quebec governments in modern times--is the very minimum that we could have expected from any conceivable Quebec government, this one or any other. It is really less than any modern Quebec government has sought, so I think to say no to Meech Lake--at least in its general outline, perhaps not in all its specifics--is to say no to Quebec.

Implicitly or explicitly, I think most of the critics of the accord really are telling us that this goal of achieving Quebec's consent really is not very important, or if it is important, it is certainly not as important as some other constitutional objectives. I know many of the critics have said

that they do not wish to upset the agreement with Quebec and that they too wish to see Quebec brought in, but I think relatively few of them have shown how those objectives, meeting their concerns and bringing Quebec in, could be reached.

Let me first look at the question of procedure. As we all know, and I am sure it has been said many times around this table, constitutional decisions are not like ordinary decisions. We somehow expect higher standards of them than we do in other kinds of political decisions.

Until 1982, I think it is important to remind ourselves, we had no agreed formula for amending the Constitution of Canada. Indeed, if one worries about the rigidity here, as one perhaps should, we should realize that for a very, very long time we worked on the assumption that any constitutional change affecting essential features of federalism required the unanimous agreement of all 11 governments. That was the assumption we worked on for years and years and years.

In that sense, what we did in 1982 gave us a bit more flexibility, and we should remember that in the past, constitutional agreement did not require any sort of popular or legislative ratification process, it was only a process of executive authority.

So 1982 did give us a constitutional amending procedure, one which required that most amendments could be made with the consent of Ottawa and seven provinces with 50 per cent of the population; it did provide for opting out of amendments which infringed on existing provincial powers, with the very limited right of compensation, which we have now expanded; and it required the unanimous agreement of all governments for a limited but crucial, and again now expanded, set of amendments, including changes to the amending formula itself.

It is certainly worth noting that the formula of 1982 was indeed criticized for being too rigid and too provincial as to formula, but that is the one we got and, of course, what we got in 1982 did add one more democratic element to the amending process, and that is the requirement of ratification by all the legislatures, so it was no longer a purely executive process.

The way we are dealing with Meech Lake is following that amending process of 1982 precisely. In that sense, I suppose, it meets the first test of legitimacy: is it following established procedures? The answer is that yes, it is. So some of the criticisms of the process have to be directed not at the way this process is going particularly, but at what we did in 1982 and the process that we created then. In so far as the amending process we agreed to in 1982 was consistent with federalist norms, so is the process we are now following.

Nevertheless, a number of very powerful criticisms have been levelled at how we are doing this. First, of course, is the idea that constitutional change should only be undertaken with the fullest possible public debate of the alternatives and issues. It is illegitimate for a group of decision-makers to spring major change on an unprepared population. Of course, the criticism here is that the 11 first ministers met at Meech Lake and then in Langevin and somehow invented or created a brand-new agreement out of whole cloth which was sort of sprung on us.

There are elements in Meech Lake, such as the provisions with respect to provincial unanimity on the creation of new provinces--although that, I



believe, was an element of the Victoria charter--which have indeed received relatively little previous attention. But I think in most respects this notion of somehow this all being new and sprung on us is unfounded.

First of all, the elements in Meech Lake have really been the central elements in Canadian constitutional debates since at least the early 1960s, such things as limits on the federal spending power, provincial role in the appointment of judges and senators, opting out of shared-cost programs. All of them have been extensively debated, have been part of formal constitutional proposals both by the provinces and by federal governments in the past. In many cases, even federal governments have suggested they were willing to accept a considerably greater provincialization in these respects than is found in the accord. In that sense, we have had a long tradition of debating this set of issues.

Second, the fundamental elements of the Meech Lake accord were clearly set out by the current Prime Minister in the 1984 election campaign and, indeed, formed a major part of his appeal for national reconciliation. In that sense, he was not springing it on us.

Third, Quebec itself had publicly stated its conditions for constitutional settlement a year before the Meech Lake accord, and we all had a year to think about that list of five conditions. A few months later, the premiers meeting together had pledged to address that agenda in this round of discussions. So again the issues were not sprung on us.

Fourth, both major federal opposition parties had debated the issues around Meech Lake within their own party forums, admittedly not without some internal division and some soul-searching, as we well know. Both the federal opposition parties had endorsed resolutions well before Meech Lake which were generally consistent with the way in which it went.

While there was indeed a secret process of seeking the optimum conditions for reaching agreement which went on before Meech Lake, and while those two meetings were indeed held behind closed doors, the ideas and alternatives being canvassed were pretty well articulated beforehand. I think the instantaneous commentary we got after the draft agreement was published after the first meeting is a good indication of how well prepared, in fact, we all were. I really do not see this in that sense as a constitutional coup d'état, to use one of the phrases which I have heard said about it.

It is also argued that the legislative debate and ratification of the accord is fundamentally flawed in that it is presented to the legislatures as a *fait accompli* which has to be voted up or down without change. The reason for this is entirely pragmatic. If one government makes changes, then the issue must inevitably be thrown back into the intergovernmental arena, since all governments, in the end, have to approve the identical text. The question is--and it is a serious question, I think, for the future of how we operate executive federalism--how do we get around that difficulty? I think this is probably the most troubling aspect of the procedure. Of what use is parliamentary and legislative debate that cannot produce change?

I think, though, there are a number of answers. I am not going to articulate them with great conviction, but there are a number of responses to that criticism. First of all, legislatures do have power here. They have the power to say no to the whole agreement, which as I noted, is not a power they had before. This agreement is going to have to survive 11 legislative votes. That is a high set of hurdles for a constitutional change to meet and a very traditional and important expression of democratic politics in this country.

Second, under the Canadian form of responsible party government that we are all so used to, like it or not, what we are doing here is standard practice. Governments using party discipline are normally able to secure passage of legislation which they put before their legislatures, and governments choose which amendments and changes they are going to accept.

Third, there are ways of putting additional items on the constitutional agenda for future discussion. Indeed, the previous discussion with the Native Council of Canada, I think, raised a series of very interesting possibilities there.

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I guess as I look at the procedures we are following here, I would say that the procedures for passing the accord do meet the test of consistency with the established constitutional procedures, are consistent with the norms of a federal system and are consistent with representative, parliamentary democracy as we have developed it in Canada. According to these norms, it has received really a very high degree of consent from all parties in Ottawa, from the government and, we will see, from most of the provinces.

On what grounds could it still be argued that this high degree of consent by accepted, legitimate, political authorities still does not meet our current standards of legitimate consent? I think there are two basic arguments here. The first I have already mentioned, that parliamentary passage should come only after the fullest degree of public discussion and consultation on the issues involved. But as I mentioned, there was extensive prior discussion of these issues before the accord was reached. It seems to me there has been a pretty high level and high degree of public discussion in this and the other legislative forums that have been provided since it was passed. Indeed, it is by no means clear to me that this accord will eventually secure the necessary consent.

The second critique of parliamentary government is one, it seems to me, which legislators like yourselves are going to have to grapple with much more in many aspects of politics in this country, and that is the criticism that, in effect, parliamentary government and executive federalism are in some crucial respects not fully representative. The fact that governments at the first ministers' conference must all be elected and re-elected, that they are responsible to their legislatures and to their electorates and so on is held by this group of critics to be an inadequate means of ensuring that all views and all interests are represented and taken into account.

It is in particular believed that minority groups or groups which are systematically underrepresented in legislatures and cabinets, such as women, will in fact, if they are not present, simply be left out and not taken account of at the table. When we have governments and legislatures whose memberships are not a mirror of the population, and governments and legislatures which have their own interests to protect, this criticism is really saying: "We cannot trust those governments, however democratically elected they are, to represent and speak for the people on constitutional matters. To be represented, one must be present." That is a very fundamental challenge, I think. It is not only on this issue that it is being raised.

In the constitutional discussions, the anger of women's groups, especially because of their perceived and I think accurate perception of being betrayed in the November 1981 conference, adds a huge degree of weight to that criticism which has been articulated, especially by women. It gives a lot of

weight to the complaint of northerners that their future, if it is not determined, is at least influenced by what was done at the accord and that they were not present at the table.

For these critics, the model of democracy that is being argued is that we need, perhaps in general but certainly in the constitutional process, a much more participatory one than we have been accustomed to in Canada, one in which citizens as a whole should have more say in such decisions, perhaps by a referendum, and in which specific provisions should be made to ensure that important groups are directly present in the decision-making process, as the aboriginal peoples were present at those aboriginal discussions.

The critique is not so much that the Meech Lake process violates our existing standards of democratic decision-making, because I do not think it does. The critique is that it violates our newly emerging standards of democratic decision-making, standards which see our present system as really much too elitist.

I am very sympathetic to many of those sets of concerns and I do think they raise some very deep philosophical issues for how we operate our democracy in such a plural and diverse society as ours. I think in this case that it is a very difficult thing simultaneously to bring about such a delicate, difficult constitutional accommodation as the Meech Lake accord and suddenly to say, "We are going to require that the process meet a new and controversial, little understood set of democratic norms."

It seems to me that executive federalism and representative, parliamentary government may be flawed and are flawed in important respects, but it is hard now to imagine how one would create an alternative process which would command broad assent and which could bring together and make the kind of accommodation which is essential here. It seems to me we should not reject the accord on these grounds, but we should in the future seek to respond in as many ways as we can to some of those new concerns. I think that rather than reject the Meech Lake outcome on this ground, we should turn our attention to the process in the future.

Here in fact one or two elements in the accord are promising. The provision for annual first ministers' conferences on the Constitution opens up much greater possibilities for extensive citizen consultation and discussion prior to the conference itself. The more clearly we know the agenda in advance, the more precise and focused those public discussions and the research and deliberations can be, and the more governments can use legislative committees like this prior to the process rather than after it. I certainly hope that this committee will make a number of recommendations as to how Ontario will gear itself up democratically to carry out these constitutional discussions prior to each of the future rounds. That would be a very important thing for this committee to do.

Those are generally my views on the process. Just to conclude more briefly on the substance, I suppose it is true that one's attitudes about process depend entirely on one's attitude about content and vice versa, so my worries about the process might be a lot greater if I were more worried about the substance of the accord. There are many respects in which the conception of federalism and of Canada embodied in the accord does coincide broadly with my own conception. As I have said, I have long thought it essential to provide some recognition of Quebec as a distinct society. It seems to me that is not only a sociological but also a legal reality in this country.



I strongly endorse the spending power provisions in the document, partly because they set up exactly the right dynamic for federalism, as I understand it. That is to say, it legitimizes federal intervention for major national purposes into areas of provincial jurisdiction for the very first time, or gives it constitutional weight for the very first time, and as well establishes the right balance between national objectives and national concerns in provincial variations. I am actually a great fan of section 106A.

I agree very much with a provincial role in appointment of senators and in particular of Supreme Court judges. It seems to me that those bodies, especially the Supreme Court which is sort of the umpire of federalism, should not be a creature of any one of the two orders of government. This may not be the best way of securing both level's involvement in Supreme Court appointments, but it is, I think, a reasonable one.

As I said, I do not want to go into a point-by-point evaluation of the accord, although I would be glad to do that later if members wished. I would like to end up with a few general observations.

First of all, I do not believe that the accord is a radical transformation in Canadian federalism or Canadian democracy. I do not see it as a huge change. It does not confer on Quebec significant new powers, and certainly not ones which suggest it is a first step down some slippery slope to independence. I do not think it does denude the federal government of its ability to exercise policy and political leadership in this country. It does not set aside the Charter of Rights.

It seems to me that much of the criticism really is of the perceived kind of tilt, and I admit there is a tilt, towards a more provincialist conception. It is based less on the text of the accord than it is on the larger visions people hold. I think much of the criticism overstates the impact of the accord and much of it fails to recognize that many of the elements in the accord such as opting out, for example, have been long-established parts of our political tradition. In that sense, there is very little that is new here.

Much of the criticism seems to overstate the existing authority of the federal government, as if now the federal government had the right to dictate to provinces what they would do in areas of provincial responsibility. It does not under the existing rules, or a province does not need to participate if the federal government sets up one.

The federal government does not deliver shared-cost programs. Provinces deliver shared-cost programs. We have not had a tradition in which the federal government, even where there are shared-cost programs, sets out highly detailed conditions and restrictions on the way in which the federal government spends the money. Our shared-cost programs have always historically, for good political reasons, given all sorts of room for provincial variation in how those programs will be conducted, quite unlike the American system where its grant and aid programs are just absolutely detailed in setting out every aspect of how a joint activity is done.

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Much of the criticism is not so much a critique of Meech Lake itself, but really is a criticism of the evolution of Canadian federalism since the 1960s, rather than of this document. Certainly, much of the criticism denies that this is a limited Quebec round and seeks to say, "Let us put a whole lot of new and additional items on the agenda which we think are very important."

As I think about the extent to which Meech Lake reinforces tradition rather than opens up new change, I see Meech Lake more as drawing a line under the past. I see Meech Lake almost as the end of an era rather than a reshaping of our future. That is especially true when you read it in conjunction with the 1982 settlement. By giving us an amending formula, and especially by giving us the charter and constitutional recognition of multiculturalism and other newly emerging dynamic elements of Canadian life, 1982 was a great nationalizing document--I think it was tremendously important in that respect--and it did give new prominence and recognition to aspects of Canadian identity and Canadian values other than our federalism side of our life, and that was tremendously important.

But it had this fatal flaw of excluding Quebec and somehow it did not really respond to that large number of proposals which, as I mentioned, had been debated over many years by provinces in the previous rounds of discussion to provide some redefinition of the federal system. What Meech Lake does is not to set aside 1982 but to pick up on those things which were left out and to reaffirm our federal character. Meech Lake is a solution to a set of problems that had dominated our thinking for a very long time and exorcises some pretty deep wounds, it seems to me.

One response to that is to say that in doing this and reaffirming our federalism, Meech Lake is further institutionalizing and entrenching the primacy of regional and linguistic divisions within our political system, is reaffirming our tendency always to be preoccupied with federal-provincial relations, regional conflicts and so on and so forth. They would also argue that in so reinforcing the federal character of the country, we are perhaps blunting the ability of Canadian political institutions to respond to new identities, new concerns and newly mobilized groups in the future.

Here I think there is a parallel between the procedural criticism, which says we need to reorient our democracy in a more participatory way, and these criticisms which really say we need to reorient our political system from its historic concern with federalism to this new concern with gender, multiculturalism and so on, those nonfederal aspects of our politics. I think that is a very important statement.

I think it can be replied, however, to those views that in fact we would not effectively be able to respond to these new agendas so long as that unfinished agenda hung over our heads. Now with Quebec fully in the fold, with the federal spending power clarified and so on, with that set of issues in a sense out of the way, we are more free to respond to these new dimensions than we might have been before. Many aspects of Meech Lake, as mentioned earlier this afternoon--for example, a provincial role in Supreme Court appointments--point to ways in which a lot of new groups can exploit those varied lacunae that the federal system creates.

I think we will learn, as we have learned in the past, that the responsiveness of our system to new issues and new groups historically is not, and has not been achieved in Canada by getting rid of federalism, although many people have argued right since the 1930s that federalism is somehow obsolete and we should get rid of it and that a really modern country is a country with class politics, not with regional politics and so on. But it has had this tremendous staying power, so arguments that we should just set federalism aside are wrong. What we should instead realize is that working in and through the institutions of federalism, exploiting the multiple opportunities for participation and so on that it creates, is where we will find responsiveness to these new concerns.

It is also important in a sense to realize, when we look at the responsiveness of our political system to minorities, that the best guarantee of the justice with which we will treat future minorities is how we have treated minorities in the past. In that sense, it seems to me the meeting of our obligation to Quebec should send a positive signal to other minority groups, rather than a negative one.

Finally, I would just like to conclude with a slightly embarrassed defence of the compromise, ambiguity and contradiction we find in this document. The critics are certainly right to point out that Meech Lake leaves much unresolved, that it is shot through with internal tensions and that some crucial terms are left pretty vague. In a sense, it is unsatisfactory to the constitutional purist whose ideal is precision, clarity, a single vision of the country and so on.

It is true that these contradictions and ambiguities mean that it is very difficult to predict the long-run effects of the Meech Lake accord. I would say that the Meech Lake accord is open enough that the future of federalism is really going to be determined much more by economic and social changes, by things like whether we have free trade and by the mobilization of citizens groups than it is by what is said in that document.

We have had historically a lot of constitutional flexibility in this country. Despite the slightly increased rigidity in the amending formula, I do not think we have lost that.

I think that all these ambiguities reflect, not poor draftsmanship or late nights, but rather the realities of constitution-making in Canada and of the country itself. We find just as many competing visions embedded in the British North America Act itself. You can haul out of that a centralized vision of the country. You can haul out of that a compact theory of federalism. Ditto in 1982. Look at what we did in 1982. We sent all sorts of contradictory messages. We invented a charter with massive numbers of brand new concepts which had never been nor had any experience in Canadian jurisprudence and so on and so forth.

Meech Lake is just in the pattern of Canadian constitutional documents when we point to its internal tensions. That is for good reason. I do not think there is a single vision of the country which can command unanimous consent, no single blueprint we can all agree on. As individuals and as a country, we are this complex mixture of interests and identities, Ontarians and Canadians, men and women, defenders of individual rights but also preservers of community. We are centralists on one day and decentralists the next. We have learned that the country really cannot survive if one group's model of politics is imposed on the rest.

It seems to me that we must make modest demands on our Constitution. We must see it as being, at any given time, a somewhat awkward balance which is politically acceptable at that time. We must see it therefore as a continuous matter of unfinished business and not require that each episode of constitution-making, like this one we are just going through, address all the possible issues.

I guess my sense is that Meech Lake is not a definitive reorientation, nor do I see it as foreclosing alternatives in the future. I see it as in a sense reaffirming some very traditional aspects of Canadian politics, but still leaving us free for the political process to work as it should and that should be the real source of political change.



Mr. Chairman: Thank you very much. You have touched on a number of areas that certainly have been compelling in the various presentations that have been made to us. I wonder if I might just start off with an observation and a question. One of the things that has probably struck all of us, and I suspect struck members of the Senate-House of Commons joint committee, is that I think you are quite right that technically you go back, that you look at the 1982 document and the various procedures that were followed.

There were different meetings. You can find statements by various leaders prior to Meech Lake which show some sort of development towards something.

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It seems to me there are two factors that have made it very difficult both for the joint committee and for ourselves. My colleague Mr. Breaugh has touched on this, and I think it is very true. There are two things. One, that however valid the process was until the agreement was signed, the fact that it was signed and then brought to the various legislative bodies, however correct, sent out a message to many, particularly those who see the charter as having done something tremendously significant, that there must be something wrong back there, that something funny happened. The late-night meetings sort of add to it, regardless of whether they were half asleep most of the--

Dr. Simeon: That is also a long tradition in Canadian politics, of course. There were the kitchen meetings--

Mr. Chairman: That is right. With all that together, then, I think it has been--not surprising, but I have been struck by the continuity of it, that people really believe in the charter. That is tremendously important to them and, right or wrong, many of the groups which come before us believe, perceive, that somehow Meech Lake has taken something away from them. The fact that we are all being told, "Don't change a word or the world will collapse," all tends to heighten that sense that something awful is about to happen.

As we have tried to work our way through it, and in particular to look at it and try to ignore some of these other things, I have often wondered if, for example, the first ministers had come out of that meeting and said: "We think we have here something that is really forward-looking and positive. We're going to meet again in six months, but we really believe in this document and each one of us is going to lobby very hard within our own jurisdiction for it;" I suspect that as a committee, as we then looked at that accord and looked at the various problems, we would still have had in the back of our minds: "OK, we want to look at this very carefully because we know how difficult it is to bring about agreement. Clearly, all the first ministers feel this is something very worthy of support."

Of course, the problem is that we have had superimposed a whole series of other kinds of discussions, which is to rubber-stamp: The Liberal members or the Conservative members, depending upon the Legislature, will all scurry around because they want to become parliamentary assistants or be sent hither and thither. That is really unfortunate because all of that has really taken away from the essence of the accord and looking at that accord.

If there is a lesson that I hope a lot of us have learned from this, it is that no matter what kind of plausible legal, technical arguments one wants to put forward, we really cannot again be put in this position of dealing with an agreement whereby it has been signed and one, in effect, has been told, "You can talk about it but you're not supposed to do anything about it."

The reason I underline that is that it does terrible damage to the credibility of our political system. We have had in the last four years three issues, one in this province and two broadly: provincially, the funding of the separate school system, then free trade and then Meech Lake. I am not arguing the rights or the wrongs of them. We have had the situation in two cases where there is agreement that these are good things and we all have to go forward with them, which then makes it difficult for anybody in any sort of legitimate way to try to oppose. In the case of free trade, I suppose, it is simply stated, "We don't need unanimity on whether we should have free trade."

One of the results of those three--and again I stress that I am not arguing here the substance of whether they are good or bad--is that those who, for whatever reason, did not necessarily agree with one or all of those initiatives felt cut off. They had no place to go. They had no place, in a sense, to find some legitimate expression for their opposition.

What I have felt from a number of the groups and individuals before us is that kind of frustration, that here we are and here I am talking to you and you may be a perfectly reasonable group of people sitting around in this committee, but, damn it all, I have no say in this. The charter and various other developments made me feel that I was going to have a say. I think that is a very serious problem that we, as legislators, have to face in making clear that our system is credible and legitimate and that there is a role here for people. We have to find out how we can go about that, whether it means getting into the question of referenda, as the gentleman earlier this afternoon was discussing, or simply expanding and developing our parliamentary process. It is better to take that all into account.

That is a long preamble at the end of the day, but it is one that I feel very strongly about. You look at the process and, I think quite rightly, you said, "Look, maybe Meech Lake has ended a certain approach." We will have, presumably, the 10 legislatures and the federal Parliament dealing with this. Have you given some thought to a process on how you would see this all starting to work so that we would have a full and frank discussion before signatures were made?

Dr. Simeon: I agree with just about everything you have said which is why I have been doing a fair bit of--I promised somebody before I came up here I would not use the word--agonizing about it. It seems to me that part of it is that we really are having our political system challenged--I mean that positively--to behave in a very different way, in a very politicized and mobilized and diverse society. It seems to me that we need to do a great deal of experimenting. As you mentioned, it is not only on this issue that we find complaints that a process is illegitimate. There is the Catholic schools issue and abortion and now some groups are going to call into question the legitimacy of the Supreme Court as a body to determine these. So I think we have a long-term task in front of us to try to devise more sensitive and more participatory kinds of processes.

The other problem with that is, too, when you have a divided society, there is a real tension between hearing everybody and deciding, because where there is division, a decision eventually is going to say no to some people's preferences and yes to others.

That is partly why, of course, we have had a process like this and, again, if you just think back to 1980 and 1981, we had a government that was prepared to go right outside the country to find a way of amending the Constitution on the grounds that it was impossible to find any mechanism for

getting consent in this country. Now, it was not able to do that in the end but that is what it tried to do.

So, I think it is a matter of hearing and representing and also a matter of deciding. How we do those things together I think is very difficult.

I do think that, under Meech Lake, many of the directions in which we should go can be done at the provincial level: how the province gears up, as I mentioned, for constitutional conferences, how the province goes about nominating justices for the Supreme Court, how the province goes about nominating Senators and so on.

All of those are ways in which, now, the province has an opportunity to experiment with new kinds of techniques and new devices. It may be, conceivably, as has been suggested out west, that we elect our nominees to the Senate. That is a possibility. Certainly, holding hearings is a possibility, as is establishing rules at the provincial level about what the partisan mix would be. We could decide, for example, that Ontario's nominees will be proportional to the party representation in the Legislature rather than having the government appoint only its supporters. So I think there are lots and lots of possibilities that we can engage in here.

1730

I also agree with you that one of the real dilemmas that we have to deal with in this country is how we relate those areas where we have to have federal-provincial agreement to the whole process of accountability. In one sense, the governments are accountable to each other not to break an agreement that they have made, but they are also accountable to their legislatures. That is exactly the dilemma we have with this being an unamendable resolution.

It seems to me that there are a few areas where that is just an inevitable problem, those areas where there must be intergovernmental agreement, as in constitutional amendment. In other areas, it seems to me that while Meech Lake very much undermines that the only way we can operate this federal system is through a lot of intergovernmental co-ordination, communication, co-operation and so on, I think we should really resist turning first ministers' conferences in general into legislatures.

One reason for that is that you buy collective agreement among all the provinces at the cost of the individual provinces' ability to play through their own political processes. While I am supportive of co-operative federalism, I see that as wanting to restrict that as much as possible to consultation, discussion and so forth rather than formal deals or formal accords, which have then to be accepted as is.

Another possibility that I think might be considered in areas where intergovernmental agreement is absolutely essential is to think about whether the first ministers' conference itself should conduct a consultative process or bring other parties into its discussions. It would not be inconceivable that the first ministers would appoint a task force, a commission or some mechanism for holding hearings and that sort of thing. I do not think I would advocate that, but that would be another way of getting popular participation right into the process if it were felt desirable.

I certainly would have liked a longer period, in a sense, in between Meech Lake and Langevin. It is interesting that the Quebec government did hold public hearings in that period, very good ones and very well attended ones. It



was a matter of considerable regret to me that more governments did not even take advantage of that few weeks to do some more consultation.

I agree with you. I think that in a sense the fear that maybe something has been taken away from us here or that we have not been able fully to participate has diminished by quite a bit the sort of popular support here. I guess my bottom line would be that it is not enough to say no to this accord. But that is enough to say, as you said, that we should try to do it better in the future.

Mr. Allen: One sometimes feels after a fairly comprehensive review of the kind that we have had, which I think was marked by a considerable note of brilliance, that we ought to just go home and write our report because it sort of pulls everything together so well.

Dr. Simeon: I'm glad I do not have to.

Mr. Allen: I really appreciate your coming this afternoon to reflect and to gather together some of the strands of discussion, the criticism and the support that does exist for the accord.

I thought in particular that your concept of Meech Lake sitting really midway between two eras of social, political and constitutional concerns and somehow being caught somewhat in the byplay, the whiplash, the cross-currents or whatever images you want to use there, was a very helpful one, because I think it helps us sort out what we are completing, what we are beginning, how the two are interacting and how we might rationally address that particular issue.

I would like to bring you up against a fairly precise question, none the less. You were here while the Native Council of Canada was making its presentation and urging that in all probability their concerns, both in terms of getting on the agenda and even more in terms of reaching out for propositions of self-government, would in the nature of things, for a number of reasons, come under the unanimity rule in the amending formula. I wonder if you could reflect on that for us for a minute because I think some of us would be very disturbed, to put it mildly, if we thought there was a single premier out there who could somehow at the end of the day finally put a stop to ambitions of reasonable proposals on native self-government.

Dr. Simeon: Yes, well, I had not thought about that particular issue and I immediately rushed to the section on the future constitutional discussion and, I suppose, maybe this is another ambiguity in the phrase that was used and which was mentioned in the discussion, "and such other matters as are agreed upon," would constitute the agenda. That certainly does not sound like a formal rule of unanimity, but it is vague.

I think the tradition in federal-provincial conferences, maybe not strong to be a convention, but I think the tradition is that those conferences have been pretty permissive. When a government has said, "I want to talk about X," I think it is very seldom that it has been ruled out of order by saying, "No, that is not on our agenda. You are not allowed to discuss it." I would think if the federal government or some significant number of provinces were insistent that issue or another issue be put on the table, it would be somewhat unlikely that one or two or a few could veto it.

The other thing I think should be mentioned in terms of the possibilities of innovation by provinces in this area of constitutional

amendment is that even though the accord sets up an annual constitutional conference, there are still other ways of getting constitutional debates going in the sense that under the 1982 amending formula, which has not been changed in this respect, any legislature can pass any resolution suggesting any kind of constitutional amendment that it wants.

As it turned out, the very first proposal under the 1982 formula was British Columbia passing a resolution saying that property rights should be put into the charter. Admittedly, that did not go anywhere in another legislature, but it suggests another way in which we can make these things happen. Where there is strong demand, where one province is perhaps willing to take the lead and then groups or governments or political parties in other provinces can take it up, you could go a long way down the road towards building consent for new constitutional amendments without it ever necessarily being on the agenda of the first ministers' conference. I think we should recognize there are different routes that could be followed here, but I am afraid I cannot give you a more definitive answer on the question of whether, say, if two provinces are saying, "We do not want to discuss aboriginal peoples," it would keep it off the table.

Mr. Allen: What about aboriginal self-government and the impact on class 24 of section 91 which gives native affairs to the federal government. Do you see in that sense the movement towards aboriginal self-government as being a federal matter and therefore under the unanimity principle?

Dr. Simeon: I would say this about the north as well; the federal government alone can go a long way down that road. It is a little easier to say this with respect to the northern territories. Despite the unanimity rule for making them provinces, the federal government can make them de facto provinces in terms of the amount of autonomy it gave and make it increasingly difficult for other provinces to resist making that a formal reality.

Native or aboriginal self-government is different in the sense that I think any proposal that has been put forward for aboriginal self-government involves a transfer of jurisdiction from the provinces to those aboriginal governments as well as from the federal government. In that sense, I do not think, even though the Constitution gives the federal government responsibility for native peoples, that you could bring about native self-government without some sort of provincial consent.

1740

Miss Roberts: I do not know if this should be the last question but I appreciated your comments with respect to spending so much time on the process. My concern, just picking up from what you were speaking to Mr. Allen about, is if the aboriginal people feel so much blocked out, if they feel that their round was missed, how important is it for us to get into the Constitution processes?

I look at the Constitution, the 1982 round or the 1987 round, the Constitution in 1867. I look at the processes that are there and I do not know if that is the right place for them to be.

Dr. Simeon: I could not agree more. I think we have constitutionalized or we have made the constitutional forum too important a forum in this country. I do not think there is any doubt about that at all and so what happens, and this is again what has happened in the Meech Lake discussion, since the Constitution is the game going on in town, everybody has

to get a play in the game and if they are not there, then they feel particularly upset.

It is remarkable to realize we have had in 1982 and 1987 a massive sort of period of constitutional activity. But historically, the way we have adapted and changed our federal system to new concerns has not been through constitutional changes. We have had remarkably few and certainly not sort of ones which swept across the whole area of amending formula and so on. Before now we had a few changes for unemployment insurance and for old age pensions, and so on and so forth. Basically what we have done historically is invent a whole lot of things like shared cost programs, which have been the device. I do not know how you can put the constitutional genie in the bottle, but I personally have a preference for, in a sense, a less high stakes kind of politics. The problem with constitutional politics, and constitutional issues, is that they are very high stakes in the sense that they deal with important symbolic values, and in the sense that once done they are hard to change and therefore to lose is much more difficult and so on.

I would love to find a way that we would put the constitution aside and concentrate more on informal agreements and legislation and so on than we have got into. The big plus of the annual first ministers' conference is this opportunity for citizen's involvement. But the big negative is that it sort of tends to tell us that as new issues arise, they are going to be debated in terms of the constitution at least to some degree.

Miss Roberts: That seems to be a problem if you debate it always in terms of the Constitution when we all agree that we now have three documents that even the Supreme Court is not sure how they are going to fit together. So that each year we are going to have this rendering of the positions of various parties or various provinces at a first ministers' conference, that might not be that helpful. Although I understand your reason for supporting first ministers' conferences, certainly the process outlined in the three documents we have is a very difficult one and is something that maybe is not helpful to our country.

Dr. Simeon: Yes, well the first ministers' conference has evolved though really in a sense out of necessity. I mean it has to do in a sense with some of the difficulties of the original Constitution and in particular, that Constitution had to adapt to all the new functions of the welfare state and government intervention in the economy and so on, so that we moved dramatically away from the idea of here was section 91 and this is what the feds do and here is section 92 and here is what the provinces do and they each go and do it on their own and so on.

It was the growth of the modern states which led to this incredible interpenetration of the two orders of government. While lots of people over the years have said as part of a constitutional exercise, "Can we not do--the Ontario word was disentanglement--can we not go back to parcelling out the functions?" Those just never got anywhere. It just turns out to be incredibly difficult to do, so that intergovernmental relations has become just an absolutely essential process if our system is going to work because we cannot reshape the powers, and because we have moved into a system--the US has that same degree of integrated penetration, but it has a much more dominant federal government. Politically, we have not emerged, moved to a situation in which the federal government has that kind of political dominance which would allow it to dictate to the provinces.



Again, I think that has changed historically. We have come out of the period of course, what we remember is what is freshest in our minds, the 1970s and the incredible assertion of provincial power during that period and the incredible intensity of regional conflicts and the incredible sense that the reason the provinces had to be strong was because we had a federal government, which did not adequately represent the whole country. That was one of the very important forces driving it.

If we look before that to the 1940s and 1950s, we had the same decentralized, federal system, the same division in powers, and so on, but at that time the issues that faced the country were the issues of building the welfare state, and so on; there were not strong regional divisions on those kinds of issues, like there were on energy. The federal government did have the major financial resources. So there was a period where we had all the complexities of federalism but lots of federal leadership and lots of national consensus. Then we were able to operate under federalism and still make things a bit more complicated, but we were still able to do it.

Mr. Chairman: Thank you very much. I am intrigued, your last comment also raises the issue of political will, regardless of constitutions. I suppose C. D. Howe would have been the first to say that there are lots of things you can do, no matter what the Constitution says.

Thank you very much for joining us this afternoon. We really appreciate the thought in your paper, which I think has been extremely helpful, not simply at the end of a long day with a variety of presentations, but this is moving towards the end of our fifth week. I think you have put some things in perspective that have been most helpful. Thank you again for coming today.

Dr. Simeon: Thank you for having me. I enjoyed it.

Mr. Chairman: Two quick announcements: A reminder that we meet here at 9:30 tomorrow morning. Breakfast is at eight o'clock in the board room, which is the little room across the hall, where we will go over some of the organizational things we have to deal with.

The committee adjourned at 5:48 p.m.



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SELECT COMMITTEE ON CONSTITUTIONAL REFORM

1987 CONSTITUTIONAL ACCORD

WEDNESDAY, MARCH 23, 1988

Morning Sitting

Draft Transcript



SELECT COMMITTEE ON CONSTITUTIONAL REFORM

CHAIRMAN: Beer, Charles (York North L)

VICE-CHAIRMAN: Roberts, Marietta L. D. (Elgin L)

Allen, Richard (Hamilton West NDP)

Breaugh, Michael J. (Oshawa NDP)

Cordiano, Joseph (Lawrence L)

Elliot, R. Walter (Halton North L)

Eves, Ernie L. (Parry Sound PC)

Fawcett, Joan M. (Northumberland L)

Harris, Michael D. (Nipissing PC)

Morin, Gilles E. (Carleton East L)

Offer, Steven (Mississauga North L)

Substitutions:

McGuinty, Dalton J. (Ottawa South L) for Mr. Elliot

Villeneuve, Noble (Stormont, Dundas and Glengarry PC) for Mr. Eves

Clerk: Deller, Deborah

Staff:

Bedford, David, Research Officer, Legislative Research Service

Witnesses:

Individual Presentation:

Holtby, John

From the Quebec Association of Protestant School Boards:

Simms, Dr. John, President

Irving, Colin, Legal Counsel

From the Human Rights Institute of Canada:

Ritchie, Dr. Marguerite E., President

Feige, Karl, First Vice-President

From the Assembly of First Nations:

Norton, Chief Joseph, Grand Chief, Mohawk Council of Kahnawake

Two-Rivers, Chief Bill

Montour, Chief Eugene

LEGISLATIVE ASSEMBLY OF ONTARIO  
SELECT COMMITTEE ON CONSTITUTIONAL REFORM

Wednesday, March 23, 1988

The committee met at 9:37 a.m. in Algonquin Salon A, Delta Ottawa Hotel.

1987 CONSTITUTIONAL ACCORD  
(continued)

Mr. Chairman: Good morning, ladies and gentlemen. If we can begin our morning session, I would like to call our first witness, John Holtby. Please come forward to the table.

We would like especially to welcome you, Mr. Holtby, as you certainly are no stranger to Ontario legislative committees or the Ontario Legislature, having served for a number of years, some 12, at the table of the Ontario Legislature, and of course also with the federal Parliament.

I note with interest that you are presently completing the writing of the sixth edition of Beauchesne's Parliamentary Rules and Forms, which I think all of us who labour in legislatures will find of interest. I gather it is hoped that will be put to bed within a month or so.

Mr. Holtby: About two weeks.

Mr. Chairman: That is great. It is a pleasure to welcome you back before an Ontario legislative body. I think I mentioned to you that we have had a chance to review some of the comments you made to the special joint committee on the Constitution of Canada. Perhaps you could begin with some opening remarks and then we will plunge in with questions.

JOHN HOLTBY

Mr. Holtby: Thank you, Mr. Chairman. That is very kind of you.

When your clerk called yesterday to extend your invitation to speak this morning, I was very flattered and pleased to have a chance to see some old friends again, but I cannot honestly say that I am keen to discuss the Constitution at 9:30 in the morning, and I do not know how you people are doing it.

I was rooting through some stuff last night and came across something from someone who I suspect is known to most of you; that is, our old friend Sir Humphrey Appleby. In Humphrey's diary, he said this on one of his dates: "In government, many people have the power to stop things happening, but almost nobody has the power to make things happen. The system has the engine of a lawnmower and the brakes of a Rolls Royce." As elected people, even though some of you are unfamiliar to me, you may have some sympathy with the wisdom of that.

I understand you are interested in the proposal that I made last August 6 at the invitation of the special joint committee of the Senate and the House of Commons which examined the constitutional entente that is now before you. Since, as your chairman has said, you have had access to the transcript of that meeting and the report of the committee--and I trust, as well, Peter

Hogg's book, in which the issue is again raised--I will not waste the time of the committee by repeating what is already on the public record.

Instead, I invite you to turn your minds to the question of codfish and the regulation of the scallops fishery. I would like to know, Mr. Chairman, how much you know about the migration of flounder.

Mr. Chairman: I have a feeling you are going to tell me a great deal.

Mr. Holtby: That is the next constitutional issue that is on the horizon for you. While we are indulging in this flight of fancy, what should be done with the soles and urchins now in the Senate? You are going to have to have an opinion on their political life or death or reform before you face the next provincial election.

I am talking about process and the place of members of Parliament and assemblies in constitutional change. Meech Lake is not the end of the process, nor is it the beginning. It is a continuation of an updating of the country's fundamental living arrangements, and this process is going to be with us for some time to come.

Where do you fit in this? In the 1981 amendments, you counted for nothing. This is in spite of the fact that the Charter of Rights and Freedoms has had great importance to your political and parliamentary life. I remember hearing members of the British House of Commons lament in that foreign House the absence of a direct sanction of the 1981 changes by the provincial legislatures. There was not much of a squeak from those houses themselves. They were, by and large, content to leave the matter up to the first ministers, the Senate, the House of Commons and the diplo-bureaucrats.

When the Constitution was amended again in 1983 regarding the aboriginal peoples of Canada, you were involved only to the extent of a brief debate in your House and unrelated and isolated debates in each of the other provincial capitals. There was little community consideration or involvement, and the fruit of that amendment has been small indeed.

Now you appear to be looking for a role, perhaps a bit late in the day, but here you are, standing on the platform, looking down the tracks as the train disappears around the bend. I hope you are getting ready to catch the next one. It is coming sooner than you think, and Meech Lake gives you a unique opportunity to play a positive role. My guess is that most of you are offended and hurt by the circumstances in which you find yourselves, and if you are anything like members of other houses, you are looking for a way to see that this does not happen again.

Let me flog this horse just a little longer. The government of Canada has announced that it will be bringing forward proposals for Senate reform. Are you content to let this question be defined solely by Ottawa? I doubt very much that your colleagues in Alberta are. Are you then prepared to be placed back in the boat in which you now find yourselves? To return to the fish, are you content that you know enough about the subject to legislate proper constitutional arrangements, not just for the people in Shining Tree, Ontario, but as well for the people of North Rustico, Prince Edward Island, or Tofino, British Columbia, or Yellowknife?

Your duty now is to legislate constitutional matters for all of Canada in fields previously not part of the realm of provincial jurisdiction. Are you to espouse provincial status for your neighbours in the Arctic or are you in favour of Nunavet?



My proposal for a national joint committee on constitutional amendments would bring members of the Senate and the House of Commons together with members of the assemblies of the provinces and the territories to hold hearings, to discuss, to educate the community--in short, to carry on the great public debate that is the *raison d'être* of Parliament.

This is the necessary prelude to decisions being taken by party leaders and first ministers. It would involve the wide spectrum of the Canadian body politic, members from both sides of each House in a regular national consultative process, I repeat, before the first ministers make their agreements. The Constitution is the property of the community, but past arrangements, unfortunately, lead many to believe that it has become a private preserve.

You have a few cards to play. I doubt that anyone realistically believes that you are going to tear open the present proposals. You could, however, recommend changes in the process for future amendments. Moreover, you could play a part now in getting that process moving.

This committee could convene a meeting of its fellows from other jurisdictions, not to talk about Meech Lake. That would be totally counterproductive. Use the opportunity to start the interpolitical discussions on Senate reform, on fisheries, on the unhappy position in which the north finds itself, on native issues, on those issues which need addressing because of the concerns raised during your present hearings.

What you have, in fact, been hearing is not so much the deficiencies of Meech Lake as the beginning of the agenda for future discussions. I have suggested a vehicle, but if there is a better one, fine and dandy. But I do think that your committee can initiate that process during its present existence. I believe that if you do not, you return all your political currency to the first ministers and the diplo-bureaucracy when you present your report. You will, unfortunately, demonstrate to the public that the public political process is capable only of reaction to the *fait accompli*.

If you want me to summarize the framework of the national joint committee, I am pleased to do so. I do not want to cut into the committee's time. I realize what the constraints are.

Mr. Chairman: We have the time for questions. Perhaps for the record and the Hansard, you would just set that out.

Mr. Holtby: Basically, what I have suggested is that we need a new creature in this country, a new parliamentary mechanism to allow the parliamentarians of the country to focus in a collective way on constitutional issues and the need for constitutional amendments and their direction on a regular basis, before the first ministers make their agreements.

My initial suggestion, and I am certainly flexible on numbers, is that two members from each provincial and territorial House, one from each side of the House--I realize that creates a difficulty in this House, but you can sort that out--along with, say, four members of the House of Commons and two members of the Senate, meet together as a national joint committee on constitutional amendments to hold hearings, as I say, to carry on the public debate. Your duty is to carry on the public debate. It is not to run the country, not to run the province; you carry on the great public debate. That is what you should be doing before the first ministers make their agreements.

I do not think there is anybody who is happy with the present arrangement. I do not think the first ministers are particularly happy with it. I do not think the senior bureaucrats are happy with it. I know they are not. They are embarrassed that they had to do it. There were no mechanisms. Why? Because parliamentarians did not put the mechanisms into place.

That is my suggestion, in brief.

Mr. Chairman: Thank you very much for setting out both the general views and the specifics of the proposal. We will turn right away to questions.

0950

Mr. Breaugh: John has been with some of us for some time so we kind of know the common ground here. I think what you have identified is the thing that keeps coming back to haunt us and that is that the process was, at best--I think it is not unfair to say that it was legal and politically correct and all of that, but it does not fit into today's society. It is both intolerable and inexplicable to the public at large as to how you came to this agreement, and I think most of us have come to the same conclusion you have, that a new mechanism must be found. I read with interest the paper we got yesterday about the national joint committee concept. It is one that I would certainly share in principle.

I take it you are not wedded in any way to the mechanics of how it is set up or how many people are on it or when it would meet or things of that nature. You are basically making the argument that some group of parliamentarians must be struck whose job it is to sort and work the process through in a public way. Is that the gist of what you suggest?

Mr. Holtby: Yes. I think there are certain constraints that operate on any body such as this. Numbers are, within reason, not critical; there is a size limit that reaches a stage of nonproductivity. I think it should, at some point, be given some statutory roots somewhere because you people keep disappearing, unfortunately. I realize that all of you come in for four years and you think you are going to be there for 40, but you do keep having elections. I think the creature needs some legislative root system somewhere, whether that be through the Parliament of Canada or even through a provincial House.

Mr. Breaugh: As I read the proposal, the basic premise is that a committee would be struck of people representing the provincial assemblies and the federal Parliament and Senate.

Mr. Holtby: And the territories. If I may interrupt, I do want to emphasize this: the territories. There is a significant reason why the territories were excluded from Meech Lake. There is a real constitutional problem there for the government of Canada. The crown in right of Canada still possesses that and the territorial assemblies have certain rights and responsibilities, but there is a hangup there.

There is not a hangup for parliamentarians. You people have been meeting with territorial parliamentarians for as long as I can remember. I remember when the first territorial assembly appeared at a parliamentary meeting; it would be in the early 1970s, and I think they were probably there before then. It is not unusual, and because you do not have the power residing in this organism to be a threat to the crown in right of Canada, you have an open door to involve the territories in the process without doing any irreparable harm along the way and they will not be forgotten again if you involve them there.

I am sorry to interrupt you.

Mr. Breaugh: What I was a little bit concerned about with your proposal is, are you excluding the concept that there would be legislative committees in each of the assemblies and the territories?

Mr. Holtby: No. They have to be there.

Mr. Breaugh: When I looked at that proposal, at first blush the one thing that struck me is that this would be, frankly, one hell of a job for anyone to take on, if you were some kind of national touring committee. You would probably have to be willing to say: "I don't want to have anything to do with Oshawa or the Legislative Assembly of Ontario any more. I am on the road for the foreseeable future." No one in his right mind who ever wants to be re-elected would be very happy with that task, but as long as we could work that out in conjunction with some kind of legislative committee format--

Mr. Holtby: There are some provinces which do not have very many committees and will not have very many committees, and the national joint committee proposal gives them, by virtue of their membership in it, access to the types of hearings and expert assistance that you have been receiving.

A key component in the proposal has to be the ability to publish papers, to gather information, to disseminate it and to be a resource centre.

Quite frankly, I made a prediction when this process started that the joint committee of the House of Commons was going to hear witnesses, the Quebec National Assembly was going to hear the same witnesses, you were going to hear the same witnesses. It is one experience for you, but it is 10-plus experiences for these individuals, and there is a limit to the resources. The country simply cannot afford, intellectually or in terms of time, to keep putting on this thing again.

So a central organism initially, but not to preclude the ability of any House to structure its own committees to look at proposals. I think you have to. I think the assembly in Alberta would place a different emphasis on Senate change than perhaps would either this committee or a national joint committee or a joint committee of the Parliament of Canada. This is just another link in spreading the work and giving the public the ability to come somewhere.

The public does not know what button to push now when it comes to the Constitution. We do not know who does it. Do we line up in front of every provincial Premier? Do we line up over at the Langevin Block? Where do you go when you want to make your views known? This is not a proposal for one-stop shopping, but perhaps a little closer to some place where people can go to make their views known.

Mr. Breaugh: One final little point that maybe you can help us with. Part of what we have experienced is that people--not all, but many of the groups who have appeared before us--are not quite sure what is going to happen. Do we write a report and then it dies, as the federal report appears to have died? There is no connection between what we might do in terms of getting input at a public hearing and where it goes from there.

I had some little concern in reading through the proposal for a national joint committee that it was not clear what that committee would do, what its relationship was with the process, whether it could set an agenda for a first ministers' conference or set public priorities and then the first ministers



would have to deal with that in some way. Have you thought through how that process might be connected?

Mr. Holtby: The national joint committee obviously has to have an awareness of what is happening on the agenda for the first ministers. There is no point in this body going off and discussing fish if the issue they are going to talk about this summer is Senate reform. So there has to be a symbiotic relationship, but that is part of the political process. We all know what that agenda is going to look like.

Initially, you are going to be flooded, and there will have to be a consultative process to narrow topics so that you can focus. You can focus, as a prelude, to meetings of the attorneys general and meetings of the first ministers. You have to be the first step, not to run the show: to hear, to educate, to influence. Have I answered your concern?

Mr. Breaugh: OK.

Mr. Offer: I would like to thank you very much for your presentation. I think you have well characterized the whole difficulty surrounding the lack of process and the obligation with respect to carrying on this national debate in whatever way is beneficial to the public at large.

The comment I have is all predicated on prior to the first ministers' conference, so just obviously keep that in mind. With regard to your suggestions about the single committee, the question I would like to pose, and I think it was already dealt with in some way by Mr. Breaugh, is the whole sense--and I will talk from an Ontario perspective--that there is an obligation and responsibility, in my opinion, by the people at large, groups and individuals, for a provincial Legislature carrying to these types of hearings. Again, I predicate it prior to our first ministers' conference.

1000

My question is, how does your proposal with respect to the single committee align itself with respect to the legislative committees? You indicated earlier you see that there should be--and obviously it is within the discretion of the province to have them--these provincial committees hearing these important issues, but you have also, in your proposal, indicated that there ought to be this single committee, a national type of committee. What is the relationship between the provincial committee and the national committee and what type of signals do you sense we are sending out to the public at large with respect to making submissions and to which committee? Is one committee going to feed into the other committee?

I think it is important in dealing with constitutional reform that once a process has been devised, whatever constitutional reform one is talking about, we do have a committee that puts a provincial perspective on the particular reform. I am just trying to get an idea. Could you comment on how you see the provincial committee feeding into the national committee or not feeding into the national committee?

Mr. Holtby: I would to stay away from the term "feed," Mr. Offer, simply because you run the risk of having every province attempting to feed the baby, as well as the other houses. I do not think that would be terribly productive. I think there are certain issues. Let us take it outside of Ontario to Newfoundland. Newfoundland could very well establish a committee on the constitutional aspects of the fisheries. Nova Scotia could equally set up

a similar committee and they will come in, I suspect, with totally contrary opinions.

That is obviously the fight that is on the horizon. It will not be terribly useful to use the national joint committee as some sort of referee in that battle. It is not an executive committee. It is a vehicle where one tries to find common ground, if it is there, to attempt to do a little public and perhaps a little private brokering but I do not think you can expect it to do much more than that. That is not to say the members of the Newfoundland House of Assembly ought to feel in any way constrained in their own committee from going off and doing what they bloody well please and espousing the views that they please.

Do not think that a national joint committee is going to solve all the problems. It will not. It is a public vehicle for public discussion, perhaps a little problem-solving and perhaps a little more national understanding of the different perspectives of the issues. I do not think you have talked about fisheries. I mean, I watched you. You thought I had lost my marbles when I started talking about flounders and what not, and you are quite right, but that is peripheral.

You have to deal with issues that you are totally unfamiliar with. You, as parliamentarians, need a vehicle so that you are not beholden to the government of Canada to tell you what is in the best interests of the fishery, or to the province of Newfoundland to tell you what is in the best interests of the fishery. You have to have a vehicle where you can sit down and it would be totally counterproductive to have 12 parliamentary committees travelling this country to talk about flounders and scallops and the Constitution. You have to come together in a vehicle.

Mr. Offer: I understand that. My query is with respect to the people who want, who see a need, to come before a legislative committee, who have, in fact, come before this legislative committee. Would the fact there would be a national committee in any way detract from the provincial committees? People would say, "I am just going to go to this national committee. I am going to say my piece because there is provincial representation and that is where I really should be selling my case."

Mr. Holtby: I just do not know of a lobbyist who would make the choice and say, "I am going to knock on that door instead of that door." I think they will knock on both doors. We have a brand-new industry springing up in the country. It is marvellous to see how all the unemployment is being solved by the Constitution. You cannot get an office space in this town now for public interest groups that want to knock on the door and tell you about Meech Lake and the Constitution.

They are going to be there. Where the real people are going to be, I do not know. I guess you know that because you go out and you knock on their doors and you talk to them in your community. That is the essential element that you always bring to a question.

Mr. Allen: I do not have to reiterate that the process from the first day of this committee has been a major preoccupation, so it is very helpful when people with the experience of Mr. Holtby come forward and make some specific, concrete proposals for us.

I guess the first reaction about getting involved in flounders and fisheries questions, apart from the fact that of course the nation has been

involved in that from the beginning--every schoolkid learns about the treaty of Washington, or should, as a sort of first example in the national debate over that question--is that it raises some very interesting matters for us, both in legislative committees and in travelling joint committees such as you propose.

I suspect that in Ontario a standing committee on the Constitution that was struck to deal with that question--and obviously, we may well have to do that--is going to have people coming mostly to tell us why that should not be on the agenda and why the nickel industry ought to be on the agenda and why some of the problems of labour with respect to certain recent court judgements under the charter ought to be on the agenda or why we ought not to be dealing with this, that and another concern.

Most of our time is going to be taken up fielding people who think they should be there rather than the issue at hand, since it really has so little to do with the main thrust of Ontario politics. I would like you initially to respond to that, how we cope with that at either level, the legislative committee or the national joint committee.

The second question I want to put to you has to do with either an alternative or an addition. I would hope an alternative, because I think this whole process can get too weighed down with structures, as you have already indicated. None the less, many of them are going to be there, and people are going to have to do their big trip.

One of the interesting things has been that people, on the one hand, have told us they want the process more democratized and, therefore, have more places to say their piece. At the same time, they have said they cannot afford committees sending groups lobbying around to all the places they want in the democratic process to say their piece, so there is a real contradiction in the public mind about that as well.

What would your response be to focusing this enterprise rather, first of all, on legislative committees and provincial hearings and then, when first ministers' meetings are in the offing with respect to any given issue, that there at least be a national legislative convention on the Constitution, which would run for a week, in which this sort of networking and interchange would take place between the legislative committees?

1010

I can see initially that the House of Commons might say, "That is our business," and yet I think the logical response to that is: "After all, there are 91 and 92 in the Constitution. We do have our separate jurisdictions. You are not familiar with ours and we are not all that familiar with yours."

Perhaps this kind of encounter situation, attempting to build consensus and formulate some common propositions with regard to the emerging issue, could therefore be a useful thing to do. You may well have thought about that as an alternative and may have rejected it. I wonder what your thoughts are on it.

Mr. Holtby: There are several questions, Mr. Allen. If I neglect to respond to them, please remind me. On the first question, about just the sheer volume of representation that can come, I think any committee, whether it be this one or any other one, simply has to put in place internal procedures to discipline itself and its time so that it is getting information it feels it



needs to have and not allowing its agenda to become the property of external forces. You simply cannot afford that; the community cannot afford it.

Certainly, every person who wants to appear in front of a parliamentary committee does not get to do that. They certainly have the ability to file information and have that information read, but they do not have the right to a block of time or to set the agenda of the committee. The committee has to do that.

In a matter related to your second question, I suspect that at some point you have considered the propriety of this committee's going outside Ontario. I cannot think you would be comfortable with the notion, particularly of a Toronto-based Ontario committee trotting into some of these other provinces. You are not going to be welcome. You need some sort of ability to talk to your fellows and you need a way to know your fellow parliamentarians in other provinces. There are very few vehicles to allow you to do that so you can be sensitive to something other than the feeling on the main street of your local community, to have a sense of the country.

If I can digress for a moment, one of my crazier proposals was to move the Parliament of Canada around the country every so often, because you do not travel from place to place. You get an aircraft and you go somewhere, but you do not go to that place, you go to that issue; you go to a room and you confront an issue. You do not get to know the people there very often. This House used to go on a great northern expedition. Once in Parliament, they fly you all over the north. The now Treasurer (Mr. R. F. Nixon) was always a great proponent of it, and I think you should tap him for some funds to do it again. It was always very helpful to sensitize members to your own jurisdiction, and you ought to be sensitized to your own country.

There are members of the House of Commons who, when they came here for the first time, had never been out of their own province, and yet they are asked to be parliamentarians for the whole country. You need a vehicle to understand what is griping the Albertans and why some British Columbians think everybody on the other side of the mountains is out to get them.

Have I missed a point, Mr. Allen?

Mr. Allen: I would like to quite specifically focus on an annual or periodic gathering of representatives of the legislative committees and the House of Commons and Senate committees in formal session around the emerging issue of debate.

Mr. Holtby: Oh, yes, I think you mentioned a week. I think you would have trouble with a meeting a week a year in getting any sort of human chemistry going. I think you perhaps have to have shorter meetings more regularly through the year, with adequate staff preparation and regular communication with your fellows.

If you are on the national executive of your party, you have regular contact with those people. That is the type of relationship that has to exist. You also have to have an ability to interrelate with members of the Parliament of Canada. Miss Jewett alludes to that fact in the transcript of the meeting that I had of the joint committee. Just the straight value of sitting down with your counterparts can be very productive.

Mr. Harris: I will be very brief. I thank you, John, for the presentation, and I understand what you are saying. I am going to ask you something on the overall picture, though.

A lot of the proposals that we have talked about and discussed, and yours, are all geared to making the first ministers' process of constitution-building better. Is that the best way to be revising our Constitution, through first ministers' conferences? I realize that is not the subject of debate.

Mr. Holtby: It is the process that is there.

Mr. Harris: Yes, but none of us likes the process that is there. It is a short-term process that evolved leading up to 1981 and 1982. I guess it was back as far as the 1970s when they talked about it. It seemed to be the only mechanism we had. You are suggesting other mechanisms for public input for parliamentarians and the public to start to be more involved in the process, but everybody is still saying, "This will make the first ministers' conference method of constitutional change better." I guess I am not so sure we should not be asking ourselves, "Should these guys be the guys who are doing this?"

I understand there are pluses and minuses, but some of the things that concern me are the very high profile that they take into that process, the politics that they have to represent in that province, particularly if it is a year before an election, or that country, if it is a year before an election, and that if we want to try to depoliticize our Constitution to a certain extent, maybe we should get these guys the hell out of there.

Mr. Holtby: A Speaker once said, "Order, this is degenerating into a partisan debate." I do not know how you can get politics out of politics or partisanship out of politics, Mr. Harris. I suppose we could turn it over to the bishops or something, but I think they would be equally political in the process.

I hear what you are saying. The stakes are very high, the expectations are very high, and it seems to me that one of the aspects of this proposal is that you begin at a lower level of expectation when you people are discussing things. Nobody expects you people to come out with a constitutional amendment. It is not your job, it is not the expectation.

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If the first ministers can do it, fine. When I first raised this, in an article in The Globe and Mail, I had no expectation that there would any sort of success at Meech Lake. The first ministers' meeting on native issues had collapsed, and I thought, my God, we are going to be stuck. The interesting thing about Meech Lake, which I think is sometimes missed, is that it was in fact 11 elected politicians in the room making the agreement. They left the officials behind; and even when they went to the Langevin block, they got them a box of doughnuts and left them outside. Politicians are the deal makers. You are the wheeler-dealers, the brokers. You are doing it every day. You can see where the consensus possibilities are. You can see what the stakes are.

I think politics and politicians are engaged in an honourable process. It is the public debate, the public brokerage. I certainly would not want Constitution-making turned over to the bureaucracy, and that is the danger now. What have you got? You have this marvellous explosion of something called intergovernmental affairs. We now have a provincial diplomatic corps in every province. Sorry, Mr. Chairman, I am getting a bit on your turf. But they are intruding. What happens is that the counterpart in this town for the government of Canada becomes a very weighty organism indeed, very powerful.



"What about that proposal?" "Oh well, we are not particularly keen on that. No, that would devalue the ability of the crown in right of Canada to do certain things." That gets shunted off, and they are very good about this.

There is a reluctance to allow political people to get involved, for a number of reasons. It is their turf, their job. You can outline any number of reasons for it. Give me a roomful of politicians, and I think something can happen. I have seen it happen too many times. I have seen committees of elected people agree on policy initiatives, on directions. Look to the record of some of the committees of your own House in getting things done: the select committee on company law and the select committee on Ontario Hydro affairs. Let the politicians get involved.

I suspect you have put your question to arouse me, Mr. Harris; you knew where my sensitivities were. But give me the politicians when you are making deals, thank you very much. That is what you are used to doing, that is what your expertise is. And that is what you are elected for; you have an electoral base. If we do not like what you are doing, we know what to do with you. But who do you touch when you are dealing with the diplobureaucrats?

Mr. Chairman: Thank you very much, Mr. Holtby, for joining us this morning and not only for presenting the idea of a national joint committee, and we appreciate your answers to our questions, but I also think you have stimulated a lot of thought on that whole process. We are indebted to you for joining with us this morning.

Mr. Holtby: May I say one thing in closing, Mr. Chairman? I hope that you will take a close look at your order of reference because if you are going to be in existence for some months to come, you can hold hearings until the cows come home, you will get lots of evidence and there will be lots of people to talk to, but give some thought to using your order of reference to convene a meeting of your colleagues from across the country to talk about these things, to talk about their place, because a number of the provinces really have no place to go. You are sitting pretty. You are a largish House, you have resources. A number of your colleagues perhaps find themselves in a different position. I think that a provincial House is a little more flexible and better able to do things than the Parliament of Canada is.

Thank you very much, Mr. Chairman. It has been a great pleasure to see some of you again and to meet others of you for the first time.

Mr. Chairman: Thank you very much.

I now call upon the representatives of the Quebec Association of Protestant School Boards, the Reverend Doctor John Simms, president; Colin Irving, counsel; and David Wadsworth, executive director.

We want to thank you, gentlemen, for joining us this morning. The clerk is circulating material. We received copies of the material, and we have before us your brief, as well as the presentation to the committee of the whole of the Senate of Canada.

I have introduced three people and see two.

Dr. Simms: Mr. Wadsworth is not here.

Mr. Chairman: Fine, we are going to have just two at the table. If I might then, I will just simply turn the microphone over to you, Reverend



Simms. Please proceed and we will follow up with questions.

# QUEBEC ASSOCIATION OF PROTESTANT SCHOOL BOARDS

Dr. Simms: Thank you very much, Mr. Chairman and members, for receiving us.

As indicated, I am John Simms. My regular work is with the handicapped, day by day with the blind, specifically in Quebec and in Ottawa in Ontario. I am president of the Quebec Association of Protestant School Boards as a citizen and as a parent. With me is Colin Irving, our legal counsel, who has practised mostly constitutional law before the Supreme Court for over 10 years, representing many of the provinces in Canada.

The Quebec Association of Protestant School Boards represents 29 school boards in Quebec, with a population of 80,000 students. We represent boards that are pre-Confederation, that go back 160 years or more in Quebec. Up until very recently, we raised our own taxes, built our own schools, paid for our own programs and literally gave some of the finest education to be found in Canada.

It was only in 1964 that the Ministry of Education was formed in Quebec, and it was only since that time that Quebec has gotten in to supporting us financially. The financing actually is mostly state-controlled now, since Mr. Parizeau put through a law when he was Minister of Finance for the Péquiste government in Quebec in 1959. Very frequently, Mr. Bourassa and others say, "Look how well we are treating these people." Well, most of what we have done down to the 1980s, we have paid for ourselves.

We did take Bill 57 to the Supreme Court for the right to still collect our own taxes. We have not collected taxes, mainly out of deference to the municipalities' and the provincial government's not wanting to mix things up. But the fact of the matter is that we could raise greater taxes than we do. It is up to six per cent at the present time.

We represent a large sector of the population in Quebec that has been there for a couple of centuries. Until Bill 101, there were as many English-speaking people in Quebec as there are French-speaking people in Canada outside Quebec. Although we have lost since Bill 101, we still have somewhere between 200,000 and 300,000 people. We still have a larger English-speaking population than more than six provinces in Canada.

I call your attention to the figures given by Mr. Fortier, the commissioner of official languages, in his annual report. He indicates that the English student population declined from 249,000 in 1971 to 117,000 in 1985. That is a decline of 53 per cent, so you can see the effect that Bill 101 has had on us.

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Looking at our own statistics presented in the brief, we had 120,000 students, a number which had remained fairly constant at the time of Bill 101. It declined in 10 years by just about 50 per cent, to our 60,000.

During the 1970s, before Bill 101, when I was chairman of the Protestant School Board of Greater Montreal, we had 64,000 students. Within less than 10 years, our student population had dropped to 32,000; again, just 50 per cent of what we had had.

Let me say that in our schools we are not anti-French-speaking. We began bilingual education back in the late 1960s, and before Bill 101 was passed, some 48 per cent of our students were involved in bilingual education. That means they went into French classes in kindergarten, grade 1, grade 2. It was only in grades 3, 4 and 5 that they began to get a small percentage of English. Again, in grade 7, they would get a full year of French and then 35 or so per cent, perhaps even 45 per cent, French throughout their high school.

The population of the PSBGM right now is typical. There are 32,000 pupils; about 12,000 are in French schools. Most of these are not really French in background--they are Greek, they are from the Caribbean and so on--but they are there because of Bill 101.

Another 10,000 are in bilingual education and these students come out fluently bilingual. The rest are in what we call the English stream but with a large portion of French.

I keep mentioning Bill 101 because I want you to realize, if you have not realized it already, that nowhere else in Canada are restrictions placed on the linguistic minority so severely as they are in Quebec.

Stepping outside of education just to the language of signs, which is a big issue in Quebec right now, where else in Canada could you say that only the predominant language, say, English in Ontario, could be used on signs? Where else could you say that businesses would have to speak English if they had more than 50 employees? Mr. Bourassa is now suggesting that maybe we ought to drop that to any business which has 10 or more than 10 employees; they would have to speak French to all their customers.

We have had new restrictions on our English films.

We have had one of our towns, Rosemere, a very predominantly English town over many, many years, now declared French because of an influx of French-speaking people into it, because it went over the 50 per cent mark of French residents there.

Without giving you any further examples, because time is short--but we can come back to it if you like--we have had many restrictions placed upon us by Bill 101, very severe restrictions, restrictions more severe than anywhere else in Canada at any time in our history.

Moving on to constitutional matters encompassing Canada: Our vision of Canada is a bilingual country. We basically support Bill C-72. Our legal counsel have been involved in cases with regard to francophones in Ontario and elsewhere, and we have given them our help and support.

Now we come to the Meech Lake accord, which we think is flawed, fatally flawed, largely because the language is so fudged, is so incomprehensible, is so unclear, so unclear that not only do you have Senator Lowell Murray saying that it gives a new status to English in Quebec and others like Mr. Bourassa saying that the "distinct society" gives them full authority over their culture and language and Bill 101 and all the laws that they need to encourage their language and culture, but even in Quebec we also have others like Jacques-Yvan Morin, a former minister in the Parti québécois government, now a professor of constitutional law at the University of Montreal law school, saying that the "distinct society" means that Quebec is a bilingual society, as it has been for 200 years, and it gives predominance and a new place and a new status to the anglophones.



What I am saying to you is, the kind of social pace that Mr. Bourassa wants is not going to be there if, when suddenly the distinct society is in place and approved, perhaps--I hope not, but if it is--then it will cause certain frustrations if it gives English a new status in Quebec.

Mr. Murray says that it is a seamless web and you cannot play with it. What is going to happen when they find that the emperor has no clothes, that it is not what it was thought to mean at all?

I would question our last speaker. I think it is unbelievable that a group of 11 could sit down in a room, alone, with time restrictions, and come up with an accord that cannot be touched. I have sat through provincial negotiations with unions and we have come up with an accord, an entente, in the middle of the night and then we have turned the text over to experts to write and rewrite until it was complete, perhaps taking months. For them to write this and say that it cannot be touched, and then to find such various interpretations across the country, is strictly unbelievable, in my mind.

I would like to turn this over to Mr. Irving to speak more fully on his ideas regarding Meech Lake, but let me say that the character of a nation is unmistakably influenced by its love of freedom, by the manner in which it treats its minorities and by the vigilance with which it rejects discrimination, racism and other forms of prejudice. The kind of Canada that we envisage has a strong place for the Canadian mosaic, has a strong place for its minorities and treats them with respect and decency.

Mr. Irving: In view of the shortage of time, I will try to be very brief so as to leave time for questions. Dr. Simms has pretty well covered the ground.

Without attempting to read our brief, may I say, first, we are very concerned about the process by which Meech Lake was reached? I think you have heard that from quite a number of people, I need not dwell on it, but there was no one there to speak for any minority. There was no one there to speak for the English in Quebec. There was no one there to speak for the rights of women, which may be seriously affected under the charter. No minorities were represented, and I was listening to the previous speaker. No one in Quebec elected Mr. Vander Zalm or Mr. Peterson or anyone else to compromise the rights of the English minority in Quebec. I do not think anybody elected Mr. Bourassa to trade off, perhaps, the rights of the French minority in Ontario. The process is seriously flawed.

The outcome is what one might expect. There is a very serious risk that minority rights have been compromised. We speak from the point of view of Quebec, where we come from, but it is not just the rights of the English minority which are at risk here. If there is a seamless web anywhere, it is the rights of minorities across the country.

No charter, no law can adequately protect minorities if people do not want to protect them. If, as Mr. Bourassa feels, Meech Lake has given Quebec carte blanche in all areas to do with language and the French language and culture, and if it affirms--the language would seem to be an affirmation of Bill 101 itself and the approach taken in Bill 101. If that is true, then I suggest people in other parts of the country who have serious concerns about minority rights in their part of Canada would have to ask whether fair and equal treatment for minorities anywhere in Canada is going to survive in the



face of further steps such as those Dr. Simms has described to suppress English in Quebec.

I would suggest that, reading Bill 101, you cannot escape the conclusion that one of the ways in which Quebec has addressed what I do not deny is a genuine problem is to suppress the rights of the English in Quebec. If that is going to continue, if that is what Meech Lake was intended to mean, then it is going to have a major impact on minority rights everywhere in the country and I would suggest, most respectfully, that it is the duty of the other legislatures and the committees of those legislatures, in looking at it, to ask themselves, "Did we really intend that?"

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What was intended? The question comes down to a very simple one. Does the right now given to Quebec, now affirmed, to use the language of the accord, override the charter? Mr. Bourassa clearly says that it does. On the other side, we hear only fudged answers: "Maybe it does; maybe it does not; probably not. Anyway, if we had insisted on a clause saying that the charter remains supreme, Quebec would never have signed."

Surely the time to address that question is before the accord is put in place. If we have reached a stage in this country where we are not allowed to ask questions like that, where we have to say, "That is too delicate; we are not going to deal with it; we are going to leave it to the court," then we have reached a very sorry pass in this country. The court cannot solve these problems. The Supreme Court, Lord knows, has enough to do.

Suppose we simply say, "Here is the language. We agree on the language. We do not know what it means." You have only to read the public statements to see that there is no agreement on the real meaning. Then we say we will leave that to the Supreme Court of Canada. Nine judges are going to decide it, perhaps by a majority of five to four.

There can only be one outcome and it is a bad outcome. Either the court will conclude that Mr. Bourassa is correct, in which case a great disservice to minority rights has been done, or it will conclude he is not correct and then we are going to have an even worse problem in Quebec, to which Dr. Simms has already alluded. The chorus of comment has started already in Quebec. The feeling will be: "We have been betrayed again. We have been sold a bill of goods. It turned out that we got nothing," as we mentioned at the end of our brief, as, for example, in the case of appointments to the Supreme Court of Canada, which is just a slip, obviously, by Quebec.

That is the situation. I will not go through the brief again. I would just like to say one other thing. It is often said that if the French minorities outside Quebec only had the same rights as the English in Quebec, they would be lucky and they would be very happy. That gets repeated so often that everybody believes it. I suggest it does not bear any analysis.

Ask yourselves whether the French minority in Ontario would be content with rules such as those Dr. Simms described, where it was an offense for which you could go to prison to put a sign on public view in French in Ontario, or where you must get a certificate from a bureaucrat which says that your child is eligible to be educated in French, which can be withdrawn by that same bureaucrat, or where you are told how many films you can see. There are those and many others. I do not think those kinds of restrictions would be acceptable at all to the French minorities outside Quebec. Ontario does

exactly the opposite. It would be utterly unacceptable, and they are unacceptable to us.

To the extent that this accord was intended to affirm that--if you read the language, that may just be what it was--we find it completely unacceptable and the wrong direction for this country, a serious betrayal of what has been built up here since Confederation. There is much more in the brief. I know time is limited so I will not go any further.

Mr. Chairman: Thank you very much. As you note, we have copies of both your documents. We will move right into questions.

Mr. Allen: One of our problems in this committee is that we have not had many direct representations from the province of Quebec, which of course is the focus of the Quebec round of the Constitution-making, and that seems a little bit ironical for us. But such are the constraints of a provincial committee. We are really pleased you have come, presented your briefs and made yourself available to us.

I am having a little trouble, and perhaps this is an irresolvable problem--I do not know; sometimes things are like that. If on the one hand, "distinct society" would imply greater restrictions on the English minority in Quebec, that creates a major problem; if on the other hand, it could be viewed as expanding and giving a promoting role to government with respect to the English minority in Quebec, that creates a major problem. If we are not really permitted, if I can use that word, to get into the language of "distinct society," "special status," "foyer principal," or all those terms that have been run around in this whole debate, how do we respond to what have, I think, been accurately characterized as the minimum terms of the Quebec government, which any Quebec government in recent history has been prepared to put to the rest of the country, for the resolution of the relationship of Quebec to the larger federation? That is my first question.

Mr. Irving: If your first premise is correct, you cannot. The only way the issue can be resolved is to have the freedom and the ability to go to the language and say: "What does it mean? What are these minimum demands?" I do not know what they are. It is always said Quebec had certain minimum demands and the preamble to Meech Lake says agreements were made to satisfy those demands. Even Quebec is not saying with any clarity that it insists absolutely that the charter must be subordinated to all its rights with respect to language. I think at this point it is simply a matter of this committee and others saying, "Do we know what this means?" I suggest the answer has to be no, we do not.

Do we know what in reality Quebec is insisting on? Perhaps what they are insisting on is freedom to act without reference to the charter. If that is true, then all right, the question can be asked, "Is the rest of Canada prepared to accept that?" If they are prepared to accept it, they will accept it. It is the first part of your question. Everybody has been saying to us all: "It is a seamless web. You cannot go back into it. You cannot open it up. You cannot ask questions. If you ask questions, it is no use to ask questions because that is the language." It is there the same flaw is. You have to ask that question or you cannot get to your question, to say, "We will not ratify it unless we know what it means."

Dr. Simms: One thing you should keep in mind is that we had a referendum in 1980 and the people of Quebec affirmed federalism. They affirmed their place in Canada by a resounding vote. I think the majority of the people



of Quebec consider themselves as good Canadians. With all due respect to politicians, I think it is the politicians who are causing the problems. I think there could have been more negotiations than took place.

Mr. Allen: I accept the judgement of the referendum. I do know it was made by a good many Quebecers on certain understandings with respect to changes that would take place vis-à-vis Quebec and the rest of the country. Those did not happen in 1982 and they have not happened since. That was the dilemma I was really trying to pose to you once more. If we cannot get into all the language that surrounded that, and if either way we go on any of those terms is going to mean more trouble anyway, then where do we come down in terms of positive proposals, either to put to the first ministers, whether or not they will open it up, or at some future meetings that might have to take place to clarify still further some of these points?

1050

I know what you are talking about. I was visiting a family in Rosemere just a weekend ago and I know what they told me. They said that on the one hand, yes, on language questions they felt significantly aggrieved. On every other aspect of their life, they felt they lived in probably the freest and most civil libertarian and accommodating society in Canada. I had to take those two and try to square them and see where I came out.

If one tries to compare the linguistic situation of the minority groups, if you compare the French outside Quebec and the anglophones inside Quebec, it would certainly be true, on the one hand, that there are fewer legal restraints on language in Ontario. But there is, of course, for the French community, massive sociological restraint that is very difficult to overcome, as you know. Whether the restraint is characterized by a piece of paper on the one hand, or the mere fact of numbers and so on on the other hand, the restraint is there.

The French minority would love to have a couple of French-speaking universities in Ontario. They would love to have the institutional structure the anglophone minority has in schools in Quebec. They would love to have the protections that range through Quebec's Charter of Human Rights and Freedoms, which is more extensive than that of Ontario.

One can sort of go both ways on that question. But is there a way, and I think this is the essential question raised by your point, that the French language, as a minority language in North America and Canada, can be protected in long, legal ways that are real and which therefore do not issue in the bureaucracy and do not issue in a piece of paper?

Dr. Simms: It has been my impression that things have been improving in Ontario and that legally the way has been opened up to overcome a lot of the difficulties of francophones.

Mr. Allen: That is true.

Dr. Simms: In Quebec, I would submit, it is going the other way. We come from a very large background of anglophones in Quebec, a very long history, where we built our own institutions. We were big enough to do it. We had a whole society, really. We had cities like Sherbrooke, which the National Geographic did a story on a few years back, which were basically anglophone in the past.



The French culture in Quebec has blossomed, and before Bill 101 was doing very well, thank you. It did not need all the restrictions of Bill 101.

What is our vision of Canada? Is it a bilingual country? I would submit that the preservation of French has a better chance with a bilingual Canada than it does with a unilingual Quebec which does not seem to care about the francophones in the rest of Canada.

Mr. Allen: I guess my only question, then, is whether one has to go totally either route. Obviously, we will get a sort of bilingualism in the rest of the country; that is happening. What is happening in Quebec is a modified unilingualism, if I can call it that, something that gives some additional reinforcement to the principal language of the province and which therefore has some implications for other language groups. Therefore, you may never get better than small-type English below large-type French. I wonder if that is an impossible future, as distinct from the totally unilingual option or the totally bilingual nation option.

Mr. Irving: No, it is not totally impossible. To come back to your original question, there are a lot of things which have been done and a lot of things which can be done to protect the French language. The difficulty that French faces is a worldwide difficulty. First of all, it has precious little to do with the English in Quebec and very little, in fact, to do with Canada.

I just came back from doing some work in Paris. The Metro is filled with ads from Berlitz. There is a Union Jack in the corner and a big sign in English saying: "There is no job for you. You do not speak the language," which would put you in jail if you put it up in Quebec.

English has become a universal second language and we live right next to the United States. Yes, French is very much threatened and people in France will tell you that too, but they cannot publish a technical paper unless they publish it in English and so on.

There is quite a difference with positive steps, reinforcing the learning process of French itself, requiring the minority--we are required and nobody objects to it--to learn the language. The English community in Quebec is the most bilingual community in Canada now, by a long way. It is far more bilingual than the French community.

You can, without trampling on anyone's rights, reinforce the reality, which is that Quebec is a majority French-speaking province. None of us who chooses to live there would ever question that, nor would any of us question that for our living there French is essential. We work in French half the time and we speak French.

All of those things are possibilities. But the vision the government has now and the fear we have of Meech Lake is that the particular language of affirmation of the role to promote the distinct identity, which is the very term used in the preamble to Bill 101, "the distinct identity of Quebec"--we see that and a number of these measures which have been taken as an effort to eliminate English in Quebec, to make Quebec a unilingual province.

The people who come to the courts to defend these measures when they are challenged--there are only two of them and it is always the same two; one is from Ontario by the way--will always say, "You cannot mix English with French or the French will disappear." Mr. Castonguay, who comes from Ottawa, who has testified for days on end--he is the spokesman for the government on this

issue--will say: "If you have one Anglais in a group of 20 francophones, they will all end up speaking English. You cannot mix them."

It is that approach that we say is absolutely unjustifiable. It is not proved, to begin with. It is simply contrary to everything we believe the Constitution is intended to protect and it does not advance the cause anyway. It is when you come to suppression rather than positive steps that we say, "Just a minute," and it is that which concerns us about Meech Lake.

A lot can be done and a lot is being done at the federal level. What is happening in Ontario is a reinforcement of French right across the country. Ontario has changed out of all recognition in the last 15 or 20 years. All of these things can reinforce it. Unfortunately, nothing can change the fact that, worldwide, international business and so on is largely now conducted in English. It is not acceptable to say that the minorities in this country are going to pay the price of that. We do not contribute to that problem. We are not the cause of the problem.

Mr. Allen: Thank you very much. I wanted to get the general questions out before we got into some of the more detailed ones that I am sure are going to arise.

Mr. Chairman: I have Mr. Morin and Mr. Cordiano. I am just conscious of the time.

Mr. Morin: You have spoken mainly of Bill 101. If the accord was to be accepted as it is now, do you think it might force Mr. Bourassa either to soften the blow of Bill 101 or even perhaps to remove it completely?

Dr. Simms: The tendency has been to make Bill 101 more extreme, as I indicated. I think he has indicated in speeches before the National Assembly and in interviews with Le Devoir and so on that his intention is to use Meech Lake to reinforce Bill 101 and to make it more restrictive. He has said, for example, that he has already made up his own mind on public signs, no matter what the Supreme Court decision is. Many people are saying now--his own minister wants out of the job, and I think it is because of the difficulties of the situation--that if the Supreme Court were to decide it was illegal to confine signs to French, he could invoke the "notwithstanding" clause even at the present time.

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Mr. Morin: Section 33.

Dr. Simms: Yes, exactly. All I am saying is that those are examples of the fact that there is this desire to become more and more extreme in restrictions.

Mr. Morin: I was not at the deliberations during the entente. I wish I could have been there to listen, because there was a lot of trading, obviously. I am sure that other members, other premiers, must have said: "Look, M. Bourassa, Bill 101 is too strong; you have to get rid of it. If you don't, we won't sign." Do you think that was in the scenario?

Mr. Irving: No. I am sure it was not, in fact, from people who were not in the room but were advisers and what not--not in the least.

It is since Meech Lake was signed, in fact, that the Minister of

Education has said, for example, that the section of the charter which allows a family from Toronto which has a child in school in English to come to Quebec and continue in English is unacceptable to Quebec. That is part of the charter. Senator Murray says Quebec embraced the charter. That is one of the key parts of the educational guarantee: that families which move to Quebec will not be forced to send their children to a French school. Since Meech Lake was signed, we have the Minister of Education saying that is unacceptable to Quebec and will be removed from the Constitution.

That is the next round. That is not a moving away from Bill 101. It is the present government that has made it an offence to tolerate a child receiving instruction in English. He does not qualify. It is an offence. I do not see a moving away from it. I am surprised there is none, but I do not see it. Au contraire.

Mr. Cordiano: Time and again we have heard from various witnesses who have come before this committee suggesting that we have to deal with the words that are used and that, in fact, this is all that is going to count, particularly from those who have legal backgrounds and legal expertise. That is fairly obvious. I would like to do that with you for a moment, just for the purpose of trying to point out whether my analysis of what this section means is the same thing that it means for you, if you have looked at this, and obviously you have looked at this from a number of perspectives.

Having discussions with a number of people who have come before our committee, you look at section 2, the "distinct society" clause, clause 2(1)(b), where we recognize Quebec as a distinct society and the role of the Legislature and government of Quebec to preserve and promote the distinct identity of Quebec. It has been said and suggested many times that what constitutes part of Quebec's distinctness is the fact that you have an anglophone minority. Would you agree that is something that has been a historical fact and not disputable?

Dr. Simms: It is a historical fact. Jean Morin says 200 years.

Mr. Cordiano: Indeed, what the legal experts are saying is that the role of the Legislature and government of Quebec would have to be to promote the distinct character, the distinct identity of Quebec. It would also include that very fact.

Mr. Irving: There is where there is very sharp disagreement. You will notice, for example, that in clause 2(1)(b), which you quoted, it says, "that Quebec constitutes...a distinct society." That is the interpretation section, subsection 2(1), "The Constitution...shall be interpreted in a manner consistent with...."

When you come to 2(3), it is not an interpretation section any more. They do not talk about distinct society, they say, "promote the distinct identity of Quebec referred to in paragraph (1)(b)."

"Distinct identity" happens to be the language of Bill 101 and you notice the subtle difference. The Quebec view is that the distinct identity of Quebec is its French identity, although it has an English minority, as they would not deny. But the distinct identity of Quebec is its distinct language, which is French. So all that is to be preserved and promoted, as persons who take that view would see it, is the French character of Quebec.

Mr. Cordiano: What seems to be disturbing you is that one word, "identity," because, later on in that sentence, it says clearly--



Mr. Irving: Yes, "referred to in paragraph (1)(b)."

Mr. Cordiano: Yes, paragraph (1)(b). What is the distinct identity of Quebec referred to in paragraph (1)(b)? Now, we are going to have legal disputes, but it is not as clear as you indicate. There is indeed an argument to be made that what constitutes Quebec's distinct society is also what I am pointing out, the minority English anglophone fact of Quebec.

Mr. Irving: If you read our brief, you will see we say just that. There is very much a debate to be had. But what does it mean? How can anyone say that Mr. A and Mr. B have agreed on something when all they have agreed on is the language and they have entirely different interpretations of what the language means. What they are really saying is: "What we have agreed is to put in this language and that language, in the end, will be interpreted by someone else. So the Supreme Court of Canada will make the agreement for us." That is not what the court is there for.

Mr. Cordiano: But it points to one thing that we, as legislators dealing with this question--at least, I will speak for myself--have some great difficulty with and that is the fact that when you are drafting a Constitution there are a lot of ambiguous terms that are used. If you look at the Charter of Rights and Freedoms, there are a number of terms which, if we do not agree, we define by a number of years of practise. That is, these terms are so vague they could be interpreted in any number of ways. If there is no convention, if there is no tradition, then certainly these things are difficult to be predetermined and I can see where that difficulty stems from.

But the fact is this is new territory that we are dealing with in terms of drafting a Constitution. Some of this has no convention, but most of it does, as most experts before this committee have told us. Most of the things that we are dealing with in the Constitution before the Meech Lake accord have been practised over the years and have not been constitutionalized and we are now doing that.

Mr. Irving: If that is what we are doing. I mean, to say "to affirm" has a sort of retrospective ring to it.

Mr. Cordiano: Yes.

Mr. Irving: The French version does not have it at all. It says something quite different, but, sticking with the English, you are affirming something which then presumably has already existed, which is the role of the Quebec government to preserve and promote its distinct identity. Somebody is going to say, "All that can mean is that what Quebec has done in the past to promote its distinct identity is affirmed and therefore Bill 101 is affirmed." That was the argument of Quebec. I am not saying that is correct.

It is true that the Constitution, like legal documents generally, is subject to interpretation. There is vague language and lawyers make their living from it--not least myself. After all, this is supposed to be the agreement that brings Quebec into the Constitution. There are only four points to deal with. This is one of them. When you are in that framework, you say, "All right, Quebec is to come into the Constitution on certain conditions." One of the conditions is that its distinct identity will be recognized. If you are not able to say what has been done on that very specific point, then I would suggest that is not acceptable.

For certain, in all of this language, there are going to be differences

of opinion and there will be court cases and so on. But when you come down to a specific like that, you say: "Here is the condition. We have met the condition." Then you ask, "How did you meet it?" and the answer is "I do not know." We do not know what we did. You are being asked to put a rubber stamp on something which I say, with great respect, you do not know the meaning of.

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Experts are going to come and say it means one thing and they are going to say it means another thing. But the reality is the people who wrote it do not agree. I think you should ask them what they meant. It surely is their responsibility to say what they meant. These, after all, are the elected premiers. Whatever the courts may make of it in the end, we would like to know. The people of Canada are entitled to know what they did intend to do.

To put it in very blunt language, were we, the English, sold out in Quebec, were the French sold out somewhere else, or is this a careful thing which is going to preserve our rights? Let us ask. It is an easy question and an easy answer.

Dr. Simms: After we visited with the Senate, it invited Mr. Bourassa to come and give his interpretation. He, of course, refused and said that his statements were public and well known. If you want to read his interpretation, which he very carefully presented to the National Assembly, you will find it is for the promotion of Bill 101 and the kind of society that envisions.

Mr. Villeneuve: I really want to thank you for your presentation, because you have certainly brought a different picture from what I had been led to believe by people who live in Quebec. I represent a riding that is adjacent to the province of Quebec. It has many disgruntled former Québécois living in it, many of whom have joined an alliance called the Association for the Preservation of English in Canada.

We have in Ontario approximately five per cent francophones, a considerably larger number than that of Ontarians of French expression. I would like for you to tell me how the graph is going, pertaining to English-speaking Québécois. The 20 per cent figure seems to bounce around. Is that flattening, going up or down, or what is happening?

Mr. Irving: It has gone well down. The statistic we are most familiar with is the percentage of English-speaking students of the total student population in Quebec, which a few years ago was about 17 per cent. At the time we went to the court over the Bill 101 case, the conflict between the Canadian charter and Bill 101 on educational rights, it had fallen to about 13 per cent. It is now down to about 11 per cent and is falling very rapidly. The English population in the Protestant school system--remember, there is a Catholic system too, and there are English Catholics in that system, so we have this double-barrelled system in Quebec, but I imagine it would give you roughly the same figures.

Ours has fallen by 50 per cent since 1976. I might say, just to give you a little more flavour of it, during the course of that case, we were arguing with this same gentleman I mentioned, Mr. Castonguay, and others, that the Canadian Charter of Rights took precedence over any other law, and therefore children who qualified for English instruction under section 23 should be accepted into our schools. Quebec's argument was that Bill 101 overruled the charter.



They relied on section 1 of the charter to say that Bill 101 was a reasonable limit and so on. In support of that argument, they brought demographic evidence to show these percentages I just mentioned to you. Their forecast, not ours, was that by 1995--it may have been the year 2000; do not hold me to the date, but it is around there--the percentage of English in the school system, without the Canadian charter, would have fallen to about 6.1 per cent of the total, and that if the charter were allowed to apply, the percentage would only have fallen to 6.7 per cent. That extra 0.6 per cent was unacceptable; the charter should be put aside because it would leave an extra 0.6 per cent of English in the schools by 1995. At six per cent, we do not have the school system at all anyway. The English school system will have disappeared.

But those are the attitudes we have to deal with. It is some of those attitudes that begin to produce rather more aggressive responses than the English in Quebec have traditionally been giving to this sort of legislation. But that is the position.

Mr. Villeneuve: I think you have just cause for alarm. Certainly, it gives this committee a great deal of food for thought. Thank you.

Mr. Chairman: By way of conclusion, one of the issues we have been wrestling with, in talking with both Franco-Ontarian organizations and, although on a limited level, anglophone organizations from Quebec--we have had Alliance Quebec here and tomorrow it will be the Quebec Federation of Home and School Associations--has been this whole problem of the rights of the collectivities and individual rights. Of course, that becomes compounded in the case of your own province in relation to the francophone community broadly, not only in Canada but in North America.

Without question, no one around this table would want to see anything which would, in effect, lead to the extermination of the anglophone minority in Quebec by allowing some punitive process to exist despite all kinds of protections that we would hope we had in our Constitution, any more than we would want to see that in terms of the francophone minorities.

As Mr. Allen notes, there are some sort of nongovernmental sociological impacts on the francophone minorities which raise a whole series of different issues and problems in terms of how we help them flourish. I think your testimony this morning has been extremely helpful in focusing our attention on those inherent dilemmas, as we go about the process of constitutional change and as we look at the relationship between the charter and charter rights and the accord.

I suppose it is fair to say that, as you leave us this morning, you leave us troubled, but I think that is what is happening in terms of our own deliberations on a number of issues. Then we have to go back and try to wrestle with that and see if there is some way we can come up with something which would assist you in the problems as you see them and, I suppose by the same token, affect the official language minorities broadly in Canada.

On behalf of the committee, I want to thank you very much for the thoughtful presentation and for your briefs. You have raised some very real questions which we have to deal with.

Mr. Irving: Could I just make one comment? If people are looking for practical approaches to the problems of the Franco-Ontarians and others, Dr. Simms pointed out that the English minority in Quebec was a very fortunate



minority and, in fact, was quite a dominant minority; it was rich. It is not easy to love the English minority in Quebec historically, and we are not much loved.

That minority was able to create for itself, simply by being left alone. Quebec never discriminated against the English. It did not take part; it just did nothing. We were able, over the years, to build up universities and hospitals and social agencies and all of those things. It is true that those are the things lacking to the French minorities elsewhere. In this day and age it cannot be done through the community's own efforts; other provinces and what not would have to look at creating those kinds of institutions now for their minorities.

If there is going to be a balance of minority rights across the country, which really is a seamless web, provincial governments will have to step in to assist the communities which, unlike the old and rich English community in Quebec, were not able to develop it. If that sort of thing is not done, then in the end, no words in any charter are going to protect minority rights.

Dr. Simms: Thank you very much, Mr. Chairman and members. We appreciated the opportunity to speak to you. If, in the course of your deliberations, you should ever want us to return we would be very happy to do so.

Mr. Chairman: Thank you very much. We very much appreciate it.

I will now call upon the representatives of the Human Rights Institute of Canada: the president, Marguerite Ritchie, and the first vice-president, Karl Feige, if they would be good enough to come forward. We thank you for joining us this morning. We realize we are running somewhat behind time, but the issues are such that we feel we want to try to explore them as deeply as we can.

I think everyone has a copy of the material that you brought, so perhaps without further ado, I could ask you to proceed and we can follow up with questions.

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#### HUMAN RIGHTS INSTITUTE OF CANADA

Dr. Ritchie: Thank you very much, Mr. Chairman. May I introduce Mr. Feige in this context. I think he is the best first vice-president anyone ever had. He and his wife, television personality Linda Feige, spent probably all last night, except two hours, without sleep to prepare the material before you. The attachments are not done; they will be provided to you. This is not his ordinary kind of work, because he is a research expert. I did want to say that.

Mr. Chairman: Some of us have known him in other guises, so we know of his good work.

Dr. Ritchie: I am quite sure. Thank you very much.

May I have your permission to use a minute minder?

Mr. Chairman: I am sorry?

Dr. Ritchie: May I have your permission to use an ordinary household minute minder for my presentation? It will help very much so far as you are concerned. I am accustomed to using it when I speak, and it forces me as a result to keep things very much within limit.

Mr. Chairman: Something perhaps the chairman himself should consider at some point.

Dr. Ritchie: All right. If I set it for what is your wish with respect to the presentation, 15 minutes or 20 minutes, I will stay within your limit.

Mr. Chairman: I think it depends on how much time you really want for questions.

Dr. Ritchie: I am interested in the questions. Suppose we set it for 15 minutes. How would that be?

Mr. Chairman: Fine.

Dr. Ritchie: All right.

Mr. Chairman: Mr. Offer can check from time to time to see that it is working.

Dr. Ritchie: I have also distributed material that is not included in our brief; that is, copies of the Universal Declaration of Human Rights as well as copies of our own brochure from the Human Rights Institute of Canada. We are a research organization. We do not vote on positions that are taken. I am the president and director of research.

I have distributed, and I would also like to provide for your files, in English and in French, copies of the sixth report of Canada on the ??International Convention on the Elimination of all Forms of Racial Discrimination. I would like it to be taken into the record that in my view what has been done in the Meech Lake accord raises very serious questions as to whether Canada is in breach of that convention and will also be in breach of the genocide convention so far as the native peoples of this country are concerned.

Proceeding from there, let us go into the actual brief that we have provided here. In the introduction, certainly we welcome not only the committee but also the way that the committee and the chairman conduct themselves; they show an obvious interest and concern. But the question has been raised before us constantly as to whether our appearing here was worth while or whether it would be in fact a hollow exercise because the Premier has already agreed to sign the accord. You can understand our concern.

The next page deals with the institute, and as you note, we are independent, citizen-based.

The next page is "The Northern Plea for Justice." In this, in putting it first, we have really reacted to what I heard when I was here yesterday attending your committee hearings, and I could see the obvious concern of members as to whether it is possible somehow to use the courts to get justice. In the view of the institute, it is not possible for this accord to survive if Canada is intended to be a country based on justice, because it is far broader than the question of justice towards Quebec. In actual fact, it is an

agreement that deprives the people of the north of their rights, and that has nothing at all to do with Quebec.

As I have pointed out, the Senate task force on the Meech Lake constitutional accord and the Yukon and the Northwest Territories, presented its report to the Senate in February. It is called, appropriately, A Question of Justice, and it is a most eloquent document. We will be providing to you four pages from that as an attachment, although of course we recommend that you read the whole thing.

When you are asked about the Meech Lake accord, I think you can quite properly say that the first issue to be addressed is not the question of disputes between lawyers. As a lawyer, I have been involved in disputes; if you put 50 lawyers in a room, you would have 50 different opinions. But there is no question at all of any difference of opinion when you are talking about the fact that the north has been deprived of its rights. That in itself raises major questions under the Universal Declaration of Human Rights and the binding legal documents that are based on that universal declaration. Canada will have to submit reports internationally, and those reports will be devastating if the Meech Lake accord goes through. That is not the Canada that I want.

I venture to say that of all the French Canadians I know, there is not one who would, if this were explained to him, say, "I am prepared to go along with the Meech Lake accord even though, for reasons that have nothing at all to do with Quebec, it will take away rights from the north." The provinces responsible for that may well have been my own province of Alberta, British Columbia, Saskatchewan and Manitoba. It has nothing to do with Quebec, and yet it is a part of it. Certainly I think the recommendations with respect to changes in the accord must start with that.

We deal then on page 4, and we have now 10 minutes. You see, Mr. Offer, I will help in keeping track of this.

The argument that has been put forward to all of us is that the problems really should be left to some future second round. That is something that makes, for example, the Honourable Eugene Forsey absolutely furious. Eugene is on our honorary board of directors, and he speaks not only with accuracy but very eloquently and in language that everybody understands. He has expressed his views in no uncertain terms that (a) there will be no second round; (b) if there is a second round as such, then all that has been provided is that there is a right to discuss certain things, the things that are listed, and apart from that, only such matters as are agreed upon. Provinces that do not want to deal with any particular thing have only, with respect to one province, to say no.

In other words, what we are looking at is this point: If unanimous agreement to make changes cannot be made now, in the euphoria of the Meech Lake accord and in the desire of everybody to make sure that Quebec knows that it is welcome, then how will it be possible to make those changes later? The answer is it will not be possible. That, of course, is our concern.

Nine minutes. We go over to page 5. There I recount what happens every time I distribute copies of this official blue document to people who are in the audience. They react with shock. They expect something that they can put up on their walls. What they get is something that, instead of being a seamless web, is a patchwork that requires lawyers and a whole collection of documents to be able to decide what it is even saying.



Page 6, "Why the Accord Cannot Be Believed." It is time to say clearly that the Meech Lake accord is based on false history. There I deal with the fact that really the politicians, for reasons of their own, have misrepresented the events that occurred. They have misrepresented what happened as far as Quebec was concerned. As I say, the excerpt from the Canadian Encyclopedia will be attached and will be provided to you.

It also deals there with the quote from the preamble. I think we have it a bit reversed there, dealing with the principle of equality of the provinces, but that should also refer to the way that Quebec came back into Confederation. As we all know, Quebec was never out of Confederation at all.

The next pages then have some quotes relating to those particular days. Then page 8, "Did Quebec Lose in the Constitutional Changes in 1982?" We have set out the reasons that, in actual fact, it did not lose by the 1981-82 changes, and we deal with the fact that it actually did make gains.

We deal then at page 10 with, "Trusting the Accord about Equality." That is the statement that this has conferred equality on all the provinces. There we deal with "distinct identity" and "distinct society" provisions, which you have already discussed.

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This is very important, because this document will be studied in the schools in this country. It is important that documents not be produced which the students can see for themselves are simply not true. No other province will have equal powers to Quebec. No other province will have as much power to influence the laws for all Canadians. It is very important. If later problems are to be avoided, if there is not to be a feeling of betrayal on both sides, it is important that all Canadians understand that situation.

On page 11, we deal with--and we have already heard that this morning; we were listening with great interest--the situation so far as the English-speaking people in Quebec are concerned: it is deteriorating. Incidentally, we sent a letter to the Prime Minister asking for a copy of the letter that the Fédération des francophones hors Québec sent to him withdrawing its support from the Meech Lake constitutional accord. We received a call from his office this morning refusing to provide us a copy and telling us to go and check with the fédération. Yet this is a matter that affects all Canadians.

Page 12: Very importantly, Mr. Trudeau speaks--and this is a man who always, all his life, has cared about Quebec--and he warns about the meaning of the expression "distinct society," that anyone who believes it does not include special powers is "in for some nasty surprises"--de vilaines surprises--"later on."

We ask, at page 13, for an opinion from the Supreme Court of Canada and we raise specifically the question of whether Canada in fact will be a viable nation.

Page 14: appointments to the Supreme Court of Canada. When questions have been raised about the vagueness of the Meech Lake accord, the response has ordinarily been that the Supreme Court can sort it all out. This is not a solution. The Supreme Court of Canada is already so overloaded with legal questions that it cannot carry any such additional burdens, at least without delays that would last for many years. Provincial governments and federal

governments do not tend to wait for legal opinions.

We deal as well there with the fact that the proposals for appointments to the Supreme Court of Canada will further complicate the situation. The argument is made there that the right to appoint or to propose appointment for judges is equal because it has been turned over to the provinces, but again, as we have pointed out, Quebec alone would have the right to appoint three judges. No other province would have it. That is fine, so long as the government in Quebec is one that is interested in being within Canada. It is not fine so far as any government is concerned which actually wants to attain independent status, because it will have the right to appoint to the Supreme Court of Canada, apart from the formality of the approval, persons who actually believe in the same things.

I also draw attention at page 15 to the fact that no provision has been made for increasing the number of judges. That, of course, will operate as a block.

Pages 16 and 17 deal with the shared-cost programs, immigration and aliens. Those you have dealt with.

Page 18 as well contains some quotes that you may or may not have had.

Page 19, on "Senate Appointments." This is a person who believes in a country that abides by law. These are something that not only shocked me, but they also raise the possibility of betrayal.

We have three minutes now.

I set out there the proposals, the provisions about the Senate, not only for appointments to the Senate to be chosen from persons whose names have been submitted by the government of the province to which the vacancy relates, and the powers and so on, but also for the convening of the conference and discussing that later.

As we have said, the convening of the conference is no guarantee of anything. They can discuss that, but the fact is--at the top of page 20--that unless there is unanimous agreement, then in that event the triple-E Senate is dead and the result is that the western provinces, which are very unhappy about their relationship to eastern Canada, will have every possible reason, really, to feel worse. There is talk out there about whether there is any difference between their situation in Canada now and joining the US. There is separatism out there as well.

Then on page 21 I pointed out there as well that group after group has protested against the accord. Even the people of Quebec, regardless of language, will lose some of their rights under the accord, and the fact is also that the accord will balkanize Canada. It will also take down the Charter of Rights and Freedoms, not merely in Quebec, as people tend to believe, but in other provinces as well. The Charter of Rights and Freedoms does provide protection, and it is a matter of very deep concern to people.

I realize that is just basically a very little edge of some of the things that concern us, but they are matters that I know you will take into consideration very carefully. I would like to say again, actually, that I would be very sorry to be in your shoes to have to reach the decision, but I know that you will listen, as you have listened, that you will weigh matters carefully, and I would request that you read in detail the brief that I have



not been able to read to you.

Thank you very much. I think we are exactly on the 15-minute mark now, with one or two minutes to go, so I have carried it out.

Mr. Chairman: Thank you very much.

Mr. Feige: I wonder if I can add a little word to this. Because of the nature of the institute, we have taken a very blanket approach to much of the accord and we have studied it in some detail. Therefore, our presentation is perhaps somewhat spotty, because there is so much to cover, but what it really boils down to is that we are looking at a new arrangement for Canada, an arrangement whereby Quebec joins the other nine provinces and we have an option here of how we want to see the future develop. You, as provincial legislatures, probably never thought that you would be in a position to have that kind of a national thrust, to play that kind of national role, but here you find yourself playing that.

We were happy to look at the situation very carefully. The previous presentation made by the protestant school board of Montreal, of which I am a product, by the way, I agree with very much and I sympathized an awful lot.

To my mind, the accord, if it is passed, would institutionalize a certain form of discrimination. We are trying here to build a future and a new direction for Canada, and certainly we want Quebec to be in it--who would be against that?--but I think the price is too high.

I do not think there is anything wrong with anybody saying, "Let's look at this again." After all, Quebec did exactly the same thing with the Victoria agreement. Everybody agreed to that and Mr. Bourassa went back home and I presume he went through an exercise, perhaps not quite as public as this, and then decided, "No, let's hold off here." I think the same kind thing should be done here.

Because we are looking at a nine-provinces-to-one kind of situation, very often this kind of criticism is looked upon as being anti-Quebec. I think, far from it, there are problems with how women are referred to in this document, or the absence thereof, and native people, for instance. My God, if the native people are not distinct people in this country, I do not know who is. Surely they have a right to call themselves the natives, and their right to a province at some future date is going to be zilch if this thing is passed. It is just not going to happen.

It seems to us that no matter where you turn in the accord, you run into some kind of a problem. It seems to me that an amendment to a constitution has to be well thought out, well explained and not made at the 11th hour, in a let's-make-a-deal type of atmosphere, which seems to be what has happened. The fact that you cannot even open it up and fine-tune it seems awfully wrong to me and should be unacceptable.

I say this, too, knowing that all of you at this table who are part of the committee have already been guided, if you like, by your leaders in this regard, because the New Democrats, the Conservatives and the Liberals are four-square behind this. I would be very interested to hear what kind of findings and recommendations you make, but to us, the system is very much flawed and it will make it very difficult for Canada to develop as a unit.



The Senate amendments we referred to earlier are just not going to happen. We are going to have the provinces appointing senators, but I can assure you that you will never see an elected Senate after that, because you are going to need the consent of all the provinces and it will never happen again.

The last point I would like to leave with you is the discussion about leaving some of these things for the second round. I do not think that is possible. It also questions a person's intelligence. You are going to back yourself into a corner now from which you will never be able to get out. The decisions you make now are going to require unanimous consent later and you are never going to have that from the 10 provinces ever again. It seems to us that the system is so flawed that it really requires complete re-evaluation.

Mr. Chairman: Thank you very much. We are also looking forward to seeing our report. May I say you wondered whether your document perhaps touched willy-nilly. I think it is quite comprehensive and I think the thread, if I may use the terminology of the day, is very clear in terms of what you have put forward.

If we could move to questions, I have Miss Roberts, Mr. Breaugh, Mr. Morin and Mr. Harris.

Miss Roberts: Thank you very much for your overview and your precise timing with respect to us. It is very helpful for us. I will be as concise as I can be as well.

With respect to your comment about waiting for the second round, it would be my feeling that in 1982, rounds were built in to that particular document. The round that was built in was with respect to the native peoples and they let that pass by and there was another round built in in 1982. That document itself is flawed and will have to be changed sooner or later, so there are rounds and rounds and rounds to go.

Although you say not to wait till the second round, I do not think we can do everything that must be done in one round. I understand your concerns with respect to it and I understand where you are coming from, but I think we all have to be clear that getting the Constitution together, if that is what we are going to call it, or the constitutional documents or whatever it will be called, is going to take more time than one, two or three rounds, or decades.

What I would like to do is zero in on your last comment. You have indicated that we should do something if we believe that governments should act in accordance with the law. Not having had a chance to completely read through your brief, are you indicating that the Meech Lake accord is not in accordance with the law and that therefore we should attempt to toss it out on that basis, or that the process that led up to Meech Lake was, if in accordance with the law, was not what you would consider to be appropriate under the human rights declaration and might be dealt with on that basis? Could you clarify that for me?

Dr. Ritchie: Thank you very much indeed. The reason for my saying that is because Mr. Mulroney announced, even before the Meech Lake accord was approved, that he was going to act as though it were in force with respect to appointments to the Senate and therefore act on recommendations that were made by the provinces. That is what I mean.

In other words, he is anticipating there and he is creating what essentially is a fait accompli. One senator has been appointed on that basis from Newfoundland. As far as I am aware, there was no input at all from women, although women actually are in a situation in which the 1929 "persons" case essentially has been reversed by that. In New Brunswick, the Premier has refused to make any submissions on that basis. Again, we have this haphazard situation in which he has taken a step ahead of the legal change.

Miss Roberts: He could do that without Meech Lake, though.

Dr. Ritchie: No. He could do it--

Miss Roberts: Informally.

Dr. Ritchie: Yes, he could do it informally. But there is a very great difference between a person doing it informally and him saying, "From now on, I am going to act as though it were law." Because then it tends to develop into a convention of the Constitution even without law, and it does have a considerable impact; it will be difficult for any other Prime Minister to reverse that situation.

Miss Roberts: But legally he could have done that without Meech Lake; whether it ever existed, he could have said, "From now on, I am going to consult with the provinces," and started that convention.

Dr. Ritchie: As a matter of fact, we will be testing that before the courts. We have a legal opinion from the Osler, Hoskin and Harcourt firm. I expect that we will be raising the question as to whether the Prime Minister should be appointing women specifically.

Miss Roberts: Just briefly, what is your time frame for that, if you are going to be doing that?

Dr. Ritchie: We have to raise funds. We are broke, but the law firm is taking it on in any event. I am going out and speaking about it to women; I am telling them that the rights they got in 1929 are being reversed and that we need that test.

Just one other thing: We did ask the Prime Minister for a reference to the Supreme Court of Canada on this very issue long before the Meech Lake accord, so it had nothing to do with Meech Lake at all.

Mr. Feige: You are quite right that an informal arrangement probably even existed for the appointment of senators, but this would make it quite different because the Premier would have to supply a list from which the Prime Minister would make a choice and he could say, "None of those is acceptable." At some point this will become a public embarrassment.

What is really happening is that you are putting this into law and making it a structure. You will never be able to have, for instance, a senator from the Yukon. We have one now. What happens to him? Does he resign? If he were to leave his post, you would never get a replacement because you have provinces looking after their own little turf. I cannot imagine that New Brunswick would say, "Well, let us have Mr. Two-Axe Earley from the Northwest Territories as an appointee from New Brunswick." It just would not work.

Again, it is this question of nation-building: Are we nation-building with this? You have to conclude that we are probably not.



Mr. Breaugh: I was interested in your kind of dissection of the accord. We have danced that tune a lot lately. We are all constitutional experts now; most of us are more than 100 miles away from home, so we eminently qualify.

Something I find disturbing in your submission, and it is one that is certainly shared by a lot of people, is that you really have to start from the position that everybody has bad intentions. I do not really feel that way at all. I see the concern, which I believe to be a valid one, but to get it to the point where it is really going to do some damage to some people, I have to draw some pretty bad motives on a whole lot of people. I have been in politics long enough to know that really is not true. Where I come from, nobody gives a damn how they appoint the Senate. They did not yesterday, they do not today and they will not tomorrow, and probably in the foreseeable future they will not either.

I share many of the concerns you have in here. What I do not share is, to put it bluntly, this wave of euphoria I saw among politicians when the accord was announced. I did not share that at all. I did not see Quebec leaving Canada. The province was still there the last time I was in Montreal. There was no dancing in the streets in Oshawa at all about it. Now I see all this analysis of the terrible things that are going to happen, and I do not share much of that either. I think there are some things wrong with this that have to get fixed.

I am as guilty as anybody of accusing the 11 guys of grabbing a two-four and going to Meech Lake and rewriting the constitution. But in reality, I know they did not do that. I know that there were thousands of little bureaucrats humming around and meetings here and there. There is nothing much new in here. There are a lot of ideas that have been discussed in the past that got put together at one time. So I am having a little difficulty grasping why you have come to the position that all hell will break loose should this accord be finalized.

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There are lots of things that I would like to do. There are things I would like to fix. There are things that need to be done. There are wrongs in here. On the other hand, when I first got elected in Ontario, there was a really wrong political party in place for 42 years. People said they would never be uprooted, but we just kind of hung out for a while and they did get uprooted, so "never" is a term that is dropping out of my vocabulary. Why do you have that kind of basic, strong negative feeling? There is a sense of urgency in the words you have used in here. It is not: "This is good. This is bad." There is an across-the-board very negative attitude in there. What has taken you to that position?

Dr. Ritchie: I suppose it is the basic education I got within the federal Department of Justice, when I saw the Department of Justice that went into the Supreme Court of Canada in the Lavell case and argued that the Diefenbaker Bill of Rights was not sufficient to give equality to Indian women. That is the start of it.

I have seen the Department of Justice in good and in bad. I certainly do not believe that everybody is evil, but we have a Criminal Code of Canada because there are people who are prepared to do things. There are politicians who are wonderful and who are concerned and who care, and there are others who are in the newspaper for other reasons. Unfortunately, we have to make the



laws on the assumption that they are intended to apply to persons who are going to be more concerned with themselves than with others.

You only have to look at my own province of Alberta and ask yourself whether every Premier of Alberta can be guaranteed to be the kind of person who will be concerned about what happens in the north or any place else or whether he will be concerned about getting elected and say, "That is my first priority." I really think we have to make laws on the assumption that we always have, that we have to provide for persons who may not be prepared to do the best. Laws are there for that purpose. Does that help?

Just one other sentence: In the institute, we constantly meet volunteers who are dedicated and who come in after their day's work to work there. We live among people who care about Canada. I understand what you are saying. I do not think it is negative. I think it is rather saying that the goal is worth taking time over. This is what Mr. Feige has said also. If we want Quebec to be satisfied--Mr. Trudeau said this as well--then make sure that this is something it will not regret afterwards, where it will not feel it was simply taken advantage of, that they was cheated. That is all I am saying and that is really all that we are saying and that the institute is saying.

The only other thing is that you cannot say to people whose rights are being affected and taken away that they should wait and see how things turn out, because if the Meech Lake accord goes through, then certain things will have happened. Does that help?

Mr. Breaugh: A little bit, yes.

Mr. Feige: May I just add one thing to that. I think you are quite right that your constituents could care less how the Senate is appointed, but I think they would care an awful lot how they act. What we have with this accord is that more and more people are speaking for the provinces and for the regions but fewer people are speaking for Canada. That is what you would find with this kind of situation. The Northwest Territories is an obvious example. Nobody will speak for them in the Senate from now on. The people who are appointed to the Senate from whatever province will have a very strong bias. I know you can say: "These people are going to become senators and are going to move to a higher plane. They will have a national outlook."

Mr. Breaugh: They might get vertical.

Mr. Feige: I think you can argue that point. Look at the recent history we have been through, the Quebec referendum and prior to that with the very hostile Quebec government, hostile towards Canada. Surely the senators, the 24, is it? that they are allowed to appoint would have been disruptive, to say the least, to the federal government. In fact, they would have been there for the sole purpose of destroying the nation. So I think the appointing of senators has to be held in the hands of a central government that is dedicated to Canada.

Mr. Breaugh: Just to conclude, where I share some measure of the concerns you have expressed is that when I look at all the component parts, one by one, I really do not have a hangup with very many of them. There are a couple in there that really do bother me a lot, but by and large, on the spending power, the appointment of the Senate and that stuff, I really do not care, to tell you the truth.

I add them all up and I have enough concerns that little flags start

going up at the back of my head that say something has to be done here to rectify some of these problems. I am not prepared to wait until the second round. I have to see that there is a process in place whereby I can rectify a wrong.

For example, I think you are quite wrong. For all the good or evil that the Senate has, I would bet, by gosh, that somebody is going to take it upon himself in the Canadian Senate to represent the Yukon and the Northwest Territories, whether he is put there by means of a nomination process from there or not. Somebody is going to pick up that cause, without question. The joint committee has toured the north. They have all found out where it is. They have written a nice report on it. They know what to say now. Some of those folks are going to say those things for a long time.

I have just a little more--it is not really faith in the process. I have just been around it long enough to know how the process works. There will be some scoundrels in politics, just as in every other walk of life. There are some good folks and some bad ones and you cannot do anything about that. A parliament is not supposed to be different from that. It is supposed to represent the people in the country.

I guess, like many Canadians, I do not feel the need to carry the Maple Leaf around with me all the time and wave it, but I do believe that in the long run there is some pride in the nation, some belief that we are emerging. I do not think we quite know exactly who we are yet and I hope we do not go to all the flag-waving extremes that some other nations do. But I do see in my own community occasions when people are really happy that they belong to this country. They are really concerned about the things that are right about it and the things that are wrong. It may not have very much to do with the Canadian Senate. It may have to do with a hockey team or some kid who swims or someone who achieves something else, but there is that sense of pride in who they are as a nation that is emerging.

I appreciate your concerns, but I would caution you just a touch. I do not think there are many people in this room who are going to be swayed by their leaders. I have been questioned by my own leader as to whether I pay any attention to him or not, let alone get swayed by him. I think the process we have here is not a bad one. I wish more legislatures were going through this same process.

Mr. Feige: Yes.

Mr. Breaugh: This is a bit of pain in the rear end from time to time, but by and large it is a good process. It teaches us things. It makes us aware of concerns in a way that maybe we had not thought of, and that is our job. Most days, I feel a little better that we can fix this thing.

Mr. Feige: I look at this almost as you look at a hockey game. You have rules for the game, and you know, more or less, what kind of game you are going to get because the rules are there. The rules change from time to time, the two-line passes or bodychecking or what have you, and it is done in the interest of the game. Here we are fine-tuning the Constitution in the interests of the country. I think there are a lot of flaws. The ones I have mentioned and some of the ones you have raised are the flaws. We are giving those rules to the next generation and so on. You want to give them the best rules possible and you want to do what is best for the country. I do not think this accord adds up to that.



Dr. Ritchie: May I just say very briefly, because it does back to the basis--I would like to find out what would be your reaction then to two groups; that is, those in the Northwest Territories and the Yukon Territory who feel they have been effectively disenfranchized and the native peoples who say, "It is a rewriting of history and it has written us out of existence, and our rights within Quebec and in other places are in peril." What could you say to those groups?

Mr. Breaugh: I admit that I yield to the temptation to get really righteous about all of that. The guy who straightened me out on that was a chief of one of the bands in Ontario who came in and sat in front of us. We were all excited about, "You have to fix this now." Somebody was suggesting the Senate had to be fixed by 1992. He sat there with more wisdom than I have seen and said: "Nineteen ninety-two means nothing to me. We have been fighting this thing for a century or two. We will continue to fight this thing. You can write any kind of rules you want. We are not going to lose. We have been here for the long haul. We will be here for the long haul. Our cause is just, and sooner or later we will get you." The guy has more brains than most people in this room.

Mr. Feige: Their cause is just and that is why we should help them.

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Mr. Breaugh: Yes, I agree.

Mr. Chairman: I have two more questioners and we still have another witness. I might just note in passing that at this particular round in Ottawa, we have been learning a great deal about Oshawa.

Mr. Breaugh: We are not even in the Constitution.

Mr. Chairman: I should note for the record that one of the reasons Mr. Breaugh is feeling so good is that the Oshawa Generals defeated the Ottawa 67s last night, so it is cause for flag waving.

Mr. Morin: Dr. Ritchie, I was quite impressed by the use of your timer. Perhaps each of us should be issued with one and use it for preambles. Before I am accused of that sin, here is my question. My question relates to your view that Quebec lost nothing in 1982 and remained in every sense a full member of the constitutional family. Can a constitutional document that is imposed on a province over the objections of its duly elected government be said to be completely legitimate politically in that province?

Dr. Ritchie: I understand your concern. If you read the brief, you will find that we have taken into account the fact that Quebec was promised, for example, a renewal of Confederation if for whatever reasons it did not feel it had achieved it, whatever that was. My own feeling was that actually the politicians had promised something in very general terms. Mr. Trudeau's statement, which was backed up by others who were there, specifically I think it was Gordon Robertson, was that Mr. Lévesque never indicated at any time anything that would be satisfactory, and you can understand that.

What you are asking me I think is something that is different. You are asking, is it legitimate? What I was dealing with was that Quebec did not lose. You are saying, is it legitimate? For that, I think that is a political answer. Will you accept the fact that we are dealing with two--que ce sont deux questions très différentes?



M. Morin: Deux questions peut-être différentes, mais c'est justement le fait qu'on veut imposer sur une province certaines choses que les autres n'accepteraient même pas.

Dr. Ritchie: Oui. Pour moi, dès le moment où M. Trudeau était au courant du fait que M. Lévesque n'allait pas signer, peut-être que M. Trudeau a dit de la refaire pour qu'elle s'applique seulement aux autres provinces et pas du tout au Québec. Mais cela aurait créé d'autres problèmes et, sans doute, il voulait profiter de l'occasion pour la mettre en vigueur.

Mais moi, je ne suis pas politicienne, je peux tout simplement dire qu'à cause de cela, deux choses sont arrivées: D'abord, le Québec n'a pas perdu mais, intellectuellement, la province de Québec n'était pas d'accord avec la Charte. Mais le Québec pouvait ??supporter contre la Charte, contre tout ça, et il l'a fait: Le Québec a décidé qu'il n'allait pas accepter la Charte du tout. Alors, il n'y avait pas de réaction ??. Mais le fait que le Québec n'avait pas adhéré à la Charte causait des problèmes, par exemple pour les autochtones, puisque l'accord du Québec n'était pas là pour aider les autochtones à améliorer leur situation.

Alors, pour moi, peut-être que M. Lévesque l'allait pas accepter n'importe quoi, et c'est ça que M. Trudeau a dit. Deuxièmement, le Québec, au point de vue juridique, n'a pas perdu, mais on a laissé l'impression, à cause de toutes ces choses, qu'il y avait vraiment eu un manque de gentillesse, un manque d'ouverture d'esprit de la part des autres provinces envers le Québec. Mais nous avons fait des recherches et nous n'avons rien trouvé pour appuyer cela. C'est peut-être quelque chose pour les professeurs à l'avenir. Je ne sais pas si ça aide un peu à expliquer ça.

M. Morin: Oui, certainement.

Mr. Harris: I guess I share some of Mr. Breaugh's comments that we are looking at the very worst in people and what they can do. I understand what you are saying. We should look at that. We should guard against that, perhaps.

I want to go back. You have said or implied that Mr. Lévesque would not have signed anything.

Dr. Ritchie: Mr. Trudeau said that he would not have and Gordon Robertson, who was there and who was, after all, Clerk of the Privy Council and party to discussions and so on, said the same thing. I think, from the point of view of Mr. Lévesque, he would have looked perhaps as though he had betrayed his own views, and his views were very clear. He wanted a sovereign state. I can understand his reaction.

Mr. Harris: Now we have a government which presumably is the most favourable type of government we are ever going to see in Quebec in my lifetime, predisposed to federalism. When I read all that you are telling me about what this government deems as a condition to stay in Canada, you are saying no.

Dr. Ritchie: What I am saying, and this goes back to what Mr. Breaugh was saying, is that I think the people themselves are better and that, significantly, the people of Quebec themselves were never given an opportunity to know what was involved in here. If they had been, I think probably they would at the very least have said: "This part concerns us. So far as the north is concerned, so far as the Yukon Territory is concerned, we French Canadians

understand injustice. We do not want to inflict injustice."

Mr. Harris: I agree with that. I want to talk only about Quebec. I agree with you on that part. So if we solve all that, your brief still says, "No good, we cannot accept Quebec under these conditions."

Dr. Ritchie: No, it is not a question of not accepting Quebec, but rather of working out--Karl is quite right in what he said and all of us feel this way--you cannot really work out something that is satisfactory under a marathon session like that. It is just too much.

Mr. Harris: For 17 years they had meeting after meeting. They went to Meech Lake. They set back for 35 days or whatever. They had all the experts in the world there and then they came back together. Do you want another 17 years? They had far more time, it was far more democratic, far more open than when we brought it home in 1981-82.

Dr. Ritchie: I do not disagree with that at all in many respects, but if you read the newspapers with respect to the disputes now between Mr. Peckford and Nova Scotia, the people of Nova Scotia are saying to their Premier, "How did you let Peckford get away with putting fisheries in there?" That is something that has every likelihood of destroying the fisheries industry in Canada, and that surprised me.

Mr. Harris: Because one Premier wants to talk about fisheries, fisheries are destroyed in Canada?

Dr. Ritchie: No, I am sorry, just for one moment, you are in the position that I was in before I heard a brief before the joint committee when someone came from the fisheries council. I said to myself: "What have fish got to do with the Meech Lake accord? They do not read very well."

What the fisheries council dealt with was plainly and simply this, and this goes into a very important part of the accord: if jurisdiction over fisheries, which will be under attack, is handed over to the provinces, then what will happen is, because fish swim in a predetermined way, the first province which has authority will want to maximize its catch. It will take as much as it can. Then the fish go up to the next province and it takes as much as it can, and then to the last one, and they are all essentially competing within themselves. I thought it over and it makes sense.

Mr. Harris: So we should not talk about it?

Dr. Ritchie: There is a commitment to talk about it, quite true; but I can understand their concern.

Mr. Harris: I think it is the stupidest thing in the accord.

Dr. Ritchie: You are quite right.

Mr. Harris: But I do not see how talking about it is going to--

Dr. Ritchie: All right, but let us go back to the point you were making. You were making the point that they had 17 years to think about it. But what we have in the newspapers now is that the premiers are saying, "For heaven's sake, what did I sign?" Even Mr. Getty out in Alberta is now under pressure because they have discovered that he has given away the triple-E Senate. They made some deals under pressure there and, now that they are

having difficulty, they are trying to get out of them.

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Mr. Harris: You may be right. What really concerns me is that if five per cent of the motive you impute is there, Canada has no chance, with or without Meech Lake.

Dr. Ritchie: Oh, let us go back to what Mr. Breaugh was saying.

Mr. Breaugh: We survived Trudeau and Mulroney; we will survive this.

Mr. Chairman: On behalf of the committee, I would like to thank you very much, not only for your presentation but also for the documents you have passed on to us. I gather another document was coming as well. Was I right? OK, and we now have that.

If memory serves, I believe you are the first organization we have had that is specifically and sort of completely involved in the area of human rights. At different times, some of us have been raising the question of what some of those major organizations dealing with human rights might feel about the accord. I think this has been very helpful in pin-pointing and underlining some of those concerns, not just in their specifics but also in a somewhat broader sense of looking at the overall development of human rights and the context within which our country fits with respect to the international community and human rights. We thank you very much for coming this morning and for making your presentation.

Dr. Ritchie: Thank you. May I just say how very much we appreciate your courtesy and your helpfulness, Mr. Chairman and members of the committee.

Mr. Chairman: I will now call upon the representatives of the Assembly of First Nations: Chief Joseph Norton, Chief Bill Two-Rivers and Chief Eugene Montour. Please come forward. I apologize, gentlemen.

Chief Two-Rivers: Don't apologize.

Mr. Chairman: It is late, but we do want to hear your presentation. I know we have lots of questions. Perhaps I will turn matters over to you and you can begin the presentation. Perhaps you would be good enough to identify yourself for Hansard when you speak.

Chief Norton: Hi, it's me.

Mr. Chairman: Good. We have that straight. Are you from Oshawa?

Interjection.

Chief Norton: Our constituents care.

#### ASSEMBLY OF FIRST NATIONS

Chief Norton: I am Grand Chief Joseph Norton of the Mohawk Council of Kahnawake which is situated just outside of Montreal, in the province of Quebec. I have been given the flexibility and the opportunity to speak on behalf of the assembly, but also to be able to zero in on the region of Quebec or the province of Quebec and some of the issues that have been raised in that particular area in reference to aboriginal rights and the Meech Lake accord.



On my right, we have one of my fellow councillors from our community, Chief Billy Two-Rivers, and, on my left, we have another fellow councillor of ours, Chief Eugene Montour, representing people of the Mohawks of Kahnawake, the Mohawk nation.

We hope there are not too many time constraints, given that the more dominant society took up the time that had been allotted to us previous to this.

Mr. Chairman: We are here all day.

Chief Norton: I must say that the honourable Mr. Breaugh took some of the thunder out of our presentation when he mentioned the statement that we will be here for ever and that we will resolve this one way or another because that is, in a sense, the type of situation presently being felt within the native world.

I have had the opportunity to be involved in many issues on a national scale, right across this country. I do not purport to be an expert in constitutional matters or in the Meech Lake accord, nor to be one who is versed in legalisms or anything of that nature. But having had the unique opportunity of being born into one of the first nations in this country and being able to live on a day-to-day basis the actual impacts that one feels in relation to any form of legislation which is developed, first, on a national scale, then relegated to--and I do not mean to say this in a diminishing sense in any way--the provinces, we feel this impact and we have felt it since the first contact with non-Indians coming into our particular territory.

I accept this unique opportunity to speak on behalf of the assembly and to try to put forth some of the thoughts and some of the feelings which have been across this country since, again, the first contact between our society and your society. I guess a bit of historical background review is necessary; not a lengthy one, but one that perhaps could be made understandable to you.

Our ancestors, our forefathers, met your ancestors, your forefathers, many centuries ago. Upon your arrival here, I say quite openly, you had nothing. You had no rights. You had no land. You had no Constitution. You had no government. You arrived here with what you had on your backs and what you had in your minds and in your hearts.

Our people saw there was a difference in your thinking, in your feelings, in the way you viewed land and the way you looked at the spiritual aspects of a human being's existence anywhere in the world. They found this quite odd and quite different.

Therefore, there was a necessity of making what are known today as treaties. These treaties were based on peace, were based on sharing, were based on co-existence. Two distinct societies living side by side, one being the original indigenous populations or indigenous peoples of this country, or of this continent, we will say, because at that time we are not talking about when Canada was Canada and the United States was the United States. Our people are of North American extraction, so it is not simply a pan-Canadian point of view we are talking about over here.

With that thought in mind and with that process and those principles which we hold dear to ourselves, the whole relationship of co-existence began in Canada and in the United States. That has been somewhat distorted as time has moved along. If we look at the process which has been established,

beginning with the colonization, so to speak, of Canada, the crown, if you will, stating that this country or this continent is part of the British Empire and that there are subjects or people who have surrendered themselves to the crown, to the British Empire, so on and so forth, and that from here on in we have subjugated ourselves to the domination of those principles, that is wrong, in our belief. That is the point of contention. That is what this all breaks down to now, what we are here for today.

Within your process, within your procedure, you believe, and rightfully so, that there is this process that took place: the Royal Proclamation, the Confederation, the British North America Act, the Constitution, the repatriation of it, the first ministers' conferences which took place, and now Meech Lake. That whole process you believed in, and perhaps rightfully so, because you were building Canada as you perceived it to be.

We believe that tokenism in its most obvious sense was introduced into that process in including aboriginal people. Knowing this particular tokenism, we still felt it was necessary for our people to be involved in that procedure just to make sure, as a reminder to you that there were other people in this continent or this country who believed in their own process. That is our alternative, which we are talking about, the process that we are nations alongside of and co-existing with Canada. We have always believed that and we still believe that today. It comes in various forms and various shapes.

Right across this country, my various colleagues, the chiefs, do not always agree, just as your premiers, prime ministers and the politicians of this country do not always agree on a procedure and a process. We do not always agree. We do not always see eye to eye on the method, but that is the diversity of the nations because of our cultural backgrounds. We all have different cultures, in a sense. We all come from different geographic locations. That sets us apart. That makes us unique and distinct within the whole framework of what is being developed.

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But we still hold fast to our original beliefs, our original understanding of where we fit into this process. I think in every aboriginal nation in Canada you will find that there are prophecies that speak of what we are going through today and you will find people who always say this is another time period in our lives, in the aboriginal world, in which we are faced with another development or another matter in which non-Indian society wishes to grow in one shape or another, but at our expense to a large degree.

Without dabbling too much in the Meech Lake accord, if you look at all facets that are mentioned in there, we have a stake and an interest in each one of those areas and, if you will, a prior interest, a prior stake, in each one of those areas where the provinces and the central government will come to some sort of arrangement among themselves. Our interests will also be either stepped on or somewhat overridden, if they are not already.

That is why you will find presentations that are made to you in which we do also have the vision that you will come to your senses somewhere along the road, but it is during that time period in which we will suffer the most. There are nations who have disappeared from this continent through genocidal means. I am not trying to lay a guilt trip on anybody over here, because that is not my objective here today. It is just to remind you that things have happened in this country that could cause and have caused a revolt, or at the very least place a lot of mistrust in provincial governments or in federal



governments as to their intentions.

So there are things that have happened in the past that lead us to believe that we will not be dealt with fairly, that we will not find justice within your process and within your system, but that does not mean we ignore what you are doing. It only solidifies our beliefs more and more that we will continue on and somewhere along the way we will convince you, because we have convinced ourselves.

We have gone through a time period in which we placed a lot of faith in the process and we said: "Go ahead. Make legislation for us. Yes, we are subject to you. Yes, we will make treaties. Yes, we will exchange land for rights." We believed that, but today we do not believe that any more. Today, we believe in ourselves. We believe that the authority and the power, if you will, is vested in ourselves. We are two parties who are working together, who are trying to make a country, if you will.

This question of the Constitution and where it is going to lead is endless. As you well know, each generation that comes needs to develop its own policies, needs to develop its own laws, needs to change. The Constitution is not something that is written in stone and that cannot be changed. The relationship, or the so-called relationship, right now is very poor, but it does not mean it cannot change. The physical barriers are minor in comparison to the mental barriers that have been thrown up. What is needed is the willingness, the ability, to envision Canada in two realities, because there are two realities. There is your reality and there is our reality. There is our path and there is your path, and we are linked because this is the continent or the country or the land we share.

That is an age-old type of arrangement which our forefathers established at one time. Some of you may not be aware of it, but there is actually an agreement, an arrangement, that speaks of two paths, two ways, two societies, two sets of laws. That scares a lot of people. That concerns a lot of people. How can that be in Canada? How could that be in the modern world? How could it be in a country where there should be only one law, where there should be only one group of people?

That is where the colonial mind has to change. You have not colonized us yet. You may have colonized us physically but not mentally. That does not work.

We have used your educational systems. We have used whatever tools and methods you have provided to try to assimilate us. We have reversed that assimilation process or have at least brought it to a halt, because we are talking about being adaptable and being resilient. Native people are, aboriginal people are, when we have moved through the course of life. We may at times find ourselves at a very low, and that whole process and that whole procedure I spoke of leading up to Meech Lake has brought us to a point of understanding that a lot of things are on our own initiative.

That is why you are now going to find various communities, nations, across this country doing things you consider to be wrong, consider to be illegal, because they are now setting their mental as well as their physical jurisdictions in opposition to the powers that are to come out of the Meech Lake accord for the provinces; the collusion, if you will, which is supposedly within the Meech Lake accord.

For us, it is a period in history in which we now have to express and expand what we believe to be our inherent right. I do not think it is going to



change the course of Meech Lake, but I cannot emphasize enough to you the reaction that is presently taking place and what is going to take place. Hopefully, it will not lead to any armed conflicts, but darn it, I know there are going to be a lot of people, a lot of first nations across this country, if they are not already, gearing and preparing themselves to express what they believe to be their jurisdictions.

They are doing it in various ways, such as coming into these types of forums which you have graciously provided for native people, and in other areas, to speak of and to put forth these thoughts and ideas. You can call them warnings, you can call them alerts, or you can use them as educational experiences, because right now, this generation of native people or aboriginal people who are here have that responsibility to hold the line, to protect whatever jurisdictions or whatever rights we have established so far.

The argument is, "Section 35 of the Constitution is not defined enough so therefore you cannot have self-government," or "We cannot entrench this and we cannot entrench that." We are going to define it now. With or without your support, we are going to define it and that is what is going to happen. You may look upon it as a sad situation, but you may look upon it as a situation that the answers will come from. There may be clashes over that. Hopefully, they will be legal clashes, but they will come about. You must be very sensitive and very aware of that, because if you cannot accept that, if there is no willingness to accept that, then you will suffer the consequences of it more than we will.

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I realize I may veer a little bit from what you expect in these kinds of presentations, but it is part of it and it is very important that you understand what we are trying to get across. You may have heard different presentations from members of the Assembly of First Nations based on specifics, but I think in one way or another we are all saying the same thing.

Some may be more blunt about it, others may be more technical about it, but in one way or another the grass-roots people, our people back in our own communities, are the ones who are the movement. They are even kicking our butts because we are not moving fast enough on whatever is coming forth. So either we are going to be here fighting on their behalf and putting forth those thoughts and ideas or somebody else is going to be here representing the communities.

I think that is all I have to say at this point. Maybe one of my colleagues might wish to add a little more to it, or if you have any questions, please feel free to ask.

#### Chief Two-Rivers: [Remarks in Mohawk]

I welcome the opportunity to address you very briefly. I am going to take some liberties, and in doing so, I have asked the Creator not to be too angry with me for speaking in a foreign language, which I am doing now.

The debate seems to be that two foreign countries or two foreign languages have been established in our land and whether French is going to be dominant or English is going to be dominant, from what I seem to be gathering.

I guess I am going to take the liberty of trying to speak to an issue, Meech Lake, and try to put at least the experience I have in white society to

you, or at least to apply that to it.

Basically, Meech Lake has come about and created this board here. To me, I ask myself why is it necessary to have a board after an agreement or an accord is formed or took shape and form.

What occurs to me, because of the difference in our societies, is that there is no relationship between governments, provincial and federal, and the people. You seem to have a long line of people here complaining or making statements that they are being oppressed in some way by Meech Lake. Why is that? What causes this?

The way I look at it is that Meech Lake is another form of creating a buffer zone between the accountability of government to the people. It has put up another barrier where the government can function and control the people at the grass-roots level. They do not have an opportunity to have their voices heard in the decision-making.

The government has a mandate for five years to control the lives of people and then utilizes them in a short period of time to get re-elected. This to me does not seem right. Everything along the way has caused the outcry, because the people are not being heard. You get school boards, you get interest groups, you get private individuals, you get people representing the north, and what is happening? They say, "We are being oppressed."

Meech Lake, the way I look at it, is a many-headed snake that is oppressing various segments of Canadian life. It affects the province of Quebec in terms of an imposed language right under the guise of a distinct society. It imposes upon other areas in the economic field where the government can impose its will economically upon some people. We have the resources, fisheries and off-shore, where a province can go ahead and impose its will upon other groups of people or other areas.

What Meech Lake has done, as far as I can read it, is create provinces that can now go ahead and enact oppressive legislation on their people and be unaccountable or not accountable for their actions because it is done in the group or under the guise of Meech Lake. There is no longer an area where--a province will say, "We are doing this because of Meech Lake." They have created another area where they can hide their actions and not be accountable.

The concern of the northern territories cannot be directed now at one province or hard-line provinces that say, "You cannot become a province." It is all the provinces now, according to Meech Lake, that stop this. What they have done is spread the whole method by which a province or provinces can be held accountable for being hard-line. It is no longer as it was in the constitutional process where Alberta was hard-line or British Columbia was hard-line in terms of the constitutional process for recognition of Indian aboriginal rights. The thing now is that it is a country-wide thing.

Meech Lake is not going to be changed, altered unless the people and their representatives begin to take more control, more of an interest, more of a caring attitude in how governments function. It is a problem I have in watching your society and your government function without having accountability to the people.

As elected people, you give yourselves up to the system and become part of it. There are no reformers. There are conformists. You step into an arena of parliament, an arena of representation at the municipal level or whatever,



and there are no what are called black sheep. There are no free-thinkers. There are party-liners. There are people who go with the establishment. I think that is what people are crying out against. They have no more control over the people who are mandated or elected to represent them. Meech Lake is a clear picture of what is happening, of how government, provincially and federally, is distancing itself from accountability to the people.

I certainly hope that at some future time, when an accord is brought forth and a free trade agreement is signed, we will have some participation by the people it is going to affect. Unfortunately, the way I am looking at it, the governments of today, and yesterday, are basically controlled by the multinational corporations. That is the way it is. Until that can be changed, the interests of the people will be secondary to the interests of corporate bodies.

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Again, in relation to Chief Norton's presentation, I concur with what he has said; certainly our ongoing responsibility to better our quality of life and our participation in co-existence on this continent will be enhanced. The work is going to go on and we are going to continue to try to better the wellbeing of all the people living within Turtle Island, within the North American continent.

When we speak of getting a better way to do things, I think the better way is that when people are represented in the development and involvement of the country, then they do not have to come to committees and vent their frustrations, their sense of loss and their sense of not having any ability or any chance to have some control over their future and the future of their children.

Basically, that is the extent of my comments.

Mr. Chairman: Thank you very much. I think you have underlined a couple of areas that are quite important to what we have been doing. First, in the remarks that Grand Chief Norton made, if I think back over the testimony that has been given before this committee by a number of native organizations, what you said brought together for me, at least, a lot of themes.

While some of the other presentations may have dealt with certain specific aspects of the Meech Lake accord, the charter and so on, I think you provided a kind of overview that we needed. It seems to me that Chief Two-Rivers has really put his finger on a fundamental problem that we have recognized, which is that because of the process that has evolved in the development of this constitutional amendment, there is a great sense of frustration among many people in terms of how valid or how legitimate it is and the relationship between those who are elected and the people generally.

There are questions from Mr. Breagh.

Mr. Breagh: I just want to see if you concur with the recommendations that were put in front of us by the Native Council of Canada yesterday about companion resolutions.

Chief Norton: We have not had the opportunity to view any of those yet.

Mr. Breagh: OK. I guess I should say for starters that I wish some



of this wisdom had been at Meech Lake. We probably would not have quite so many headaches here today.

Do you have anything in particular about this agreement that you think this committee should take some action on? In other words, have you taken a position that there is a need to schedule a first ministers' conference on it? Is there any date you have in mind? Is there anything of that nature you want to make us aware of today?

Chief Norton: Not necessarily. If my colleague wishes, he can expand on that a little more. We do not necessarily have any recommendations as far as dates are concerned, but we do emphasize and vigorously suggest that discussions continue, because what we are noticing now is a deterioration, a very unfortunate situation where the relations among provinces, the first nations in those provinces and the central government is deteriorating very quickly.

If there is no willingness on the part of Canada and the provinces--at this time, we have to include them because they have become an important reality, if you will, in the whole constitutional concept and in our lives. There is daily contact and daily impact. If no efforts are made to begin to sit down and look at the co-existing relationship in a fashion that looks at it in an equal type of situation, the recognition of inherent rights and self-government or self-determination, if that is going to be put on the back burner, if that is going to become lost somewhere in the shuffle, then indeed there is going to be a large outcry.

The things I spoke of in my presentation, about actions being taken by native people and various organizations or first nations across this country, will be much more amplified. If the governments themselves do not start moving in that area of trying, at the very least, to establish discussions and forums in which the native people can begin to function, both nationally and regionally, then you are going to have a hell of a problem on your hands. The concentration right now is in other areas. Whether you agree with me or not, whether you want to accept it or not, the issue of aboriginal rights is very key to the future of Canada, yet it is not being addressed in that fashion.

Mr. Breaugh: We had some concerns expressed to us yesterday that from the point of view of funding, from the point of view of personnel, from the point of view of occasions to liaise with or talk to the federal government, what seemed so close a year ago now seems farther away. It seems to have lost its momentum somehow, and there is a need to put that back so there is some clear direction that many of us--I do not know whether everybody shares it, but I think most of us do feel that this is a debt which is long overdue, that this is a problem which has never been resolved and needs to be resolved now, that the nation is never really going to be a nation until it resolves this problem first.

Chief Two-Rivers: The concerns that are there are valid for the people making that presentation. Chief Norton spoke about diversity. There is diversity among us. What we are looking at basically is a responsibility on the part of the governments, both federal and provincial. There is a concept there of resource-sharing. We are saying, yes, there is a responsibility there. Resource-sharing must come about, but we must have, and we are going to have, political autonomy within Indian homelands. What that means is that the ability to legislate illegally over Indian nations, which has been in place and happening for the last several hundred years, is going to cease. It is our responsibility to ensure that it does cease. We have to work out a

relationship of resource-sharing, of co-existence, but also we must erase that colonialistic attitude, which is still alive and well. We must seek and strive for political autonomy.

Maybe I can just cite the example of the United States-Canada trade agreement. What are some of the loudest cries you hear in Canada? One is that we are losing our political sovereignty. When I say "our," I have my white hat on. Basically, this is what it is. If we were going to resolve something, then certainly we have to go back, readdress and try to get things into the right perspective respecting the two realities. We are not a threat to you. We do not outnumber you. We are not going to endanger the English or the French language, but we are certainly not going away.

We are here to stay for a hell of a long time. We have been here for a long time. I am sure you have heard these statements. But when you say, "Do you concur with another presentation or do you go along with certain things?" it is difficult for us because the Iroquoian reality or the Mohawk reality may not be the same as that of some other first nations.

Miss Roberts: Briefly, thank you very much for coming and for your excellent presentation. I want to assure you that we are here for the long haul too. We, as a provincial body, are here to work out what the problems are.

I was very interested in hearing about your idea of two paths. I have heard this before. I think one of the most important things is that we are not even sure what our path looks like and we do not know a thing about your path. Do you understand what I mean?

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Part of the problem we are going to have to face is what our path is right now, but you have to help us with what your path is, not just to legislatures, not just to the federal government, not just to those people you wish to talk to, but to those people you talk about who must participate more.

We have to be educated, and I mean "we" as people other than of the first nations. I would hope, in dealing in the long run, that you understand we need your help, we need your education, we need to understand what your path is and where that path is going to lead you.

I have listened very carefully to what Chief Two-Rivers has said. He expresses it very well in what I would call an objective, a goal, a standard, to use the weird language we have been dealing with lately, but I say we have to know much more. I encourage you all to educate us not only on this level but on all levels.

Chief Norton: It is interesting that perhaps we have made some inroads in trying to explain to people that we need to educate. We first had to learn ourselves where we needed to go. I feel relatively comfortable in saying that the majority of the first nations in this country have begun to take on and begun to understand what their roles are during this time, why they were placed by the Creator in this particular portion of the world and what their responsibilities and duties are.

The people who have come to this continent, your ancestors and others, came from an oppressed situation. I do not think you will disagree with me, if you look at the history of Europe and the wars and the problems that had gone on there long before there were any problems here in this particular part of the world.

That was brought here. It has taken a time period in which the resources and the environment of this country have been brought to a point of destruction or, at the very least, the manner in which so-called progress across this country is being looked at: the rape of the land, the natural resources, oil exploration, total destruction of forests, natural and wild habitats, the destruction of aboriginal ways of living. That is finally coming to the forefront more and more, because it is not just our environment being destroyed; it is yours also. As you said, you are here, you are a reality and you are going to remain. You cannot survive on plastics. You cannot survive on things that are artificially created. You have to live and breathe on something that is natural.

I think that is our message, that is part of our way of trying to educate you in those areas. That you have to understand. That is the basic philosophy and the basic reasoning under which our ancestors said, "Yes, you can live in our continent." That is a human right everybody has, and that is what we are talking about: the right to be able to live and breathe freely.

Mind you, there are rules and regulations in modern society that have to be established because of the weird thinking that goes on and because of the related social problems, which are many. But that is one of the messages we have to offer in order to correct a lot of the problems that are prevalent in your society but have also had an effect on our society--we have also been influenced by drugs, alcohol and many other things, which I am not going to cry about because that is not the reason we are here today--to educate yourselves about how we should be living in conformity with the natural surroundings.

It does not mean that we do away with industry. It does not mean that we do away with all these things. But we must be conservation-minded. That is why it is important in the Meech Lake accord when you talk about fisheries and about all the other things to ask: Whose fisheries? At what cost? Exploration? At what cost? Is each province going to protect its own little jurisdiction and say, "We can develop all the hydro we want, we can dam up all the rivers we want, because it is going to create employment and we will get rich on it"?

What the hell, if your trees and air are gone, you cannot eat money. If you have destroyed all the water, you cannot drink money. People have to understand it is basic, simple common sense we are trying to establish, besides the argument of co-existence and besides what aboriginal rights mean.

Chief Two-Rivers: Chief Norton has dealt with the materialistic aspect of our lives. It is also important that we consider the spiritual aspect and the family unit, the extended family, and our relationship and behaviour to our fellow men.

In materialistic gain, we tend to put a human factor on it. We have got to change this relationship. We have got to turn inwardly and re-establish the family unit and get a feeling of the future. We have got to cease and desist from mortgaging the future of our children and our grandchildren. This concept of "I'm all right, Jack, and to hell with tomorrow" is going to have to change.

Basically, we are not going to be the victim of it. We may have a few coughs, sore eyes and stuff like that, but what is going to be left for our children and their children to follow? We may sit in ivory towers of legislation and stuff like that, but certainly when the final accounting comes down, it is our children and our grandchildren who are going to pay. We had better start thinking straight in those terms.



Miss Roberts: My comment, though, is to help in the education. I live on a farm, on which is an extended family; we have the past and the future as well. I understand what you are saying to me. I am trying to educate people with respect to that way and those thoughts.

Please, you help educate as well. Do not think that your nationhood can just be a nationhood in Canada. You must explain to the rest of Canada where your nationhood is going. All I am trying to do is encourage you. I do not want to argue. All I want to do is encourage you to go to the schools, to go to the people and to participate in educating them. Help us out.

Chief Norton: Invite us, first of all.

Chief Two-Rivers: Yes, invite us. We will go anywhere and we will travel anywhere. Just as an example of broadening our scope, I guess, you will notice that one of our Mohawks crossed your imaginary line yesterday. There again is just an expression of our mobility rights within our territory.

Mr. Chairman: A final question, Mrs. Fawcett.

Mrs. Fawcett: I want to carry something that Miss Roberts said just a wee bit further. I think you have to educate us, yes, but I think it is most important that we listen. Obviously, you have been listening to what we have been saying and doing. You have even turned it around and you have been able to use it. I think you are fine examples to us in that it is fine for you to come to us and educate, but unless we are open and we listen, it will be to no avail. Would you agree?

Chief Two-Rivers: I am glad you addressed that to the committee.

Mrs. Fawcett: Well done.

Mr. Chairman: I would say you have been around a few political meetings.

From time to time in these hearings we get into very specific and detailed discussions. I think what has been tremendously useful in your presentation today and in the questions afterwards is that you have brought a lot of things together and you have suggested some ideas and ways of looking at things.

It is hard. Committees are given a task, they plunge in and get into all the details. The old saying about from time to time stepping back and looking at it becomes awfully important. Several times over the last couple of months we have had presentations which have, if you like, challenged us to do that and given us an opportunity to do that.

I think we are all very grateful to you today for not dealing specifically, line by line, with Meech Lake but rather stepping back and giving us a perspective, and, as Mrs. Fawcett quite correctly underlines, for "playing back what you have seen" in terms of what others have been saying to us and relating that to our own society, distinct or not.

This is perhaps a good point to take that food for thought and break for some other food. We thank you very much for coming today.

The committee recessed at 1 p.m.

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SELECT COMMITTEE ON CONSTITUTIONAL REFORM

1987 CONSTITUTIONAL ACCORD

WEDNESDAY, MARCH 23, 1988

Afternoon Sitting

Draft Transcript

SELECT COMMITTEE ON CONSTITUTIONAL REFORM

CHAIRMAN: Beer, Charles (York North L)

VICE-CHAIRMAN: Roberts, Marietta L. D. (Elgin L)

Allen, Richard (Hamilton West NDP)

Breaugh, Michael J. (Oshawa NDP)

Cordiano, Joseph (Lawrence L)

Elliot, R. Walter (Halton North L)

Eves, Ernie L. (Parry Sound PC)

Fawcett, Joan M. (Northumberland L)

Harris, Michael D. (Nipissing PC)

Morin, Gilles E. (Carleton East L)

Offer, Steven (Mississauga North L)

Substitutions:

McGuinty, Dalton J. (Ottawa South L) for Mr. Elliot

Villeneuve, Noble (Stormont, Dundas and Glengarry PC) for Mr. Eves

Clerk: Deller, Deborah

Staff:

Bedford, David, Research Officer, Legislative Research Service

Witnesses:

Individual Presentation:

McRae, Ken

From the National Anti-Poverty Organization:

Echenberg, Havi, Executive Director

Individual Presentations:

Robertson, Hon. Gordon, Fellow in Residence, Institute for Research on Public Policy

Pepin, Hon. Jean-Luc, Fellow in Residence, Institute for Research on Public Policy



### AFTERNOON SITTING

The committee resumed at 2:09 p.m. in Algonquin Salon A, Delta Ottawa Hotel.

Mr. Chairman: Good afternoon, ladies and gentlemen. We will begin our afternoon session. I would like to welcome Ken McRae, who is here. I may thank you as well for a somewhat late start so that we could all have some food, which will make us a much cheerier group to dialogue with this afternoon. We want to thank you very much for coming. As you are aware, our procedure is to have you make your presentation and then we will follow up with questions in the usual fashion.

#### KEN McRAE

Mr. McRae: Good afternoon. In my presentation, I shall address several specific concerns I have regarding the Meech Lake-Langevin Block constitutional accord. In some cases, I shall offer possible solutions to concerns raised, while in others I shall simply explore what I see as potential dangers due to vague, ambiguous wording and shall ask for a clear definition. Then I shall address the issue of the process of constitutional change and how this present change has been handled by our country's politicians. Following that, I will answer any questions the committee members may have.

Before getting down to brass tacks, however, I would like to say that I am not a lawyer or a constitutional expert. I appear before you simply as a concerned private citizen who has followed constitutional issues with great interest since 1979.

Amending formula, Senate reform and creation of new provinces: The present formula is superior to the one put forward in the accord in that as few amendments as possible should be left to unanimous consent. The possibility of any one province holding up reform by itself should be limited as much as possible.

Paragraph 41(b), "the powers of the Senate and the method of selecting senators," and paragraph 41(c) dealing with the number of senators a province is entitled to: Being left to unanimous consent makes reform of the Senate probably impossible compared to highly unlikely now under subsection 38(1). I will not go into all the possibilities for reform of the Senate, but I would like to comment on the proposed triple-E--elected, equal and effective--Senate. The elected part is OK, the effective part depends on what that would entail and the equal part, no way.

A triple-E Senate is wanted by the west to counteract the superiority of numbers the central provinces enjoy in the House of Commons. If this were to happen, it would make a mockery out of the principle of representation by population. While I do not think it fair for the four western provinces to have only 24 senators when the four Atlantic provinces have 30, a triple-E Senate is not the answer. It would be more just for the country to have no Senate than to have a triple-E Senate. Just because our federal government has signed a free trade agreement with the United States does not mean we have to adopt its form of Senate.

Paragraph 41(i), dealing with the creation of new provinces: I would prefer to see it remain under subsection 38(1), but I do not believe the

western provinces, in particular British Columbia and Alberta, would go along with that. I suspect they want an individual veto over the creation of new provinces because they do not want the possibility of a native-led provincial government attending constitutional conferences and having a vote.

Knowing that the territories would not become provinces for a very long time anyway and that Senate reform, even under subsection 38(1), is highly unlikely, does not make an individual veto over these matters any more fair or just.

Appointment of Supreme Court judges: Subsection 101B(2) says, "At least three judges of the Supreme Court of Canada shall be appointed from...Quebec." The Supreme Court Act also says "at least three" shall be appointed from Quebec. I do not question entrenching three judges to be appointed from Quebec, even though it has a quarter of the country's population. I do, however, question the words "at least." They leave the door open to the possibility that one day perhaps a majority of the justices on the Supreme Court could be from Quebec. If the paragraph read, "At least six judges of the Supreme Court be appointed from outside Quebec," do you think Quebec would object? I am sure it would.

"At least" should be dropped. An additional paragraph should be added that, "At no time may a majority of the nine justice positions of the Supreme Court of Canada be made up of appointments from any one province." Some may think it would never be allowed for one province to have a majority of the nine justice positions. The fact is that our Constitution is a legal contract, and as such, any loopholes seen should be closed.

Quebec "distinct society" clause: There are several grey areas in the accord. A case in point is the section dealing with Quebec's "distinct society." Do paragraph 2(1)(a) and subsection 2 provide legal grounds for the official language minority in each province to go to the Supreme Court and have it impose minority language rights or services legislation upon the provinces, no matter what the majority of the electorate in a given province might think or want, the argument to be used being that in order for provincial legislatures to conform to subsection 2, "...to preserve the fundamental characteristic of Canada referred to in paragraph (1)(a)," they must provide minority language rights and/or services?

Some provinces presently provide some services, some are in the process and others are not. Could this paragraph lead to still more services from those that already provide some?

What about subsection 2(4), "Nothing in this section derogates from the powers, rights or privileges...of the legislatures or governments of the provinces, including any powers, rights or privileges relating to language"? Does this mean a minority language group cannot go to court over paragraph 2(1)(a) because it is up to the individual provinces to decide what, to them, constitutes preserving the fundamental characteristic of Canada referred in 2(1)(a)?

Another question arising from the section is whether Quebec may be an exception to the aforementioned possibility of court-imposed language services in that paragraph 2(1)(b) and subsection 3 might be legally construed to overrule paragraph 2(1)(a) and subsection 2. Will this mean Canada might one day consist of one officially French province and nine officially bilingual provinces?

Just what exactly does paragraph 2(1)(b), "the recognition that Quebec constitutes within Canada a distinct society," mean? The obvious answer is that due to its majority French language and culture, it constitutes a distinct society. By reason of logic, if Quebec constitutes a distinct society within Canada due to its French language and culture, then the rest of Canada must constitute a distinct society due to its English language and culture. Perhaps New Brunswick should be considered individually distinct because of its more balanced English-French mix.

Since it says in the preamble and the resolution to authorize an amendment to the Constitution of Canada that the accord amendment recognizes the principle of the equality of all the provinces, this equality should be clearly demonstrated or else it is a lie. As the accord now reads, it is a lie, a remarkably shocking error that Senator Murray should be told about.

Paragraph 2(1)(b) should be changed at least to read "the recognition that the province of Quebec individually and the other provinces as a whole constitute within Canada distinct societies." Actually, I believe it should read "the recognition that the provinces of Quebec and New Brunswick individually and the other provinces as a whole constitute distinct societies within Canada." Then, too, if this equality of the provinces is true, subsection 3 should be changed to read, "The role of the legislature and government of each province to preserve and promote its distinct society referred to in paragraph (1)(b) is affirmed."

Like the vast majority of Canadians, I want to see Quebec sign the Constitution as a full and equal partner in Confederation. However, like the vast majority of Canadians, I do not want to see it sign as a more-than-equal partner, as this accord would make it.

Judges and the Constitution: Another concern is that the accord usurps the democratic process in that it gives judges the power to impose legislation upon governments, with the electorate having no say in the matter. Every government enacting any piece of legislation should be able to be held accountable for that legislation by the voting public. If this accord, with its vague wording and ambiguous meanings, in a number of cases, is entrenched as is, the courts will have not only to interpret but also to define legislative consequences.

This will result in the Supreme Court's imposing legislation upon governments, which can say to a perhaps angry electorate: "Don't blame us. We didn't do it. It was those nasty old judges on the Supreme Court."

Judges are appointed officials who cannot be held accountable by the electorate. A judge's purpose is to interpret laws enacted by elected representatives of the public who are accountable to the public. It should not be the purpose, duty or responsibility of judges to define laws; that should be up to the politicians. Judges should simply interpret how each individual case relates to already defined law.

The question of how the Supreme Court will interpret and then define legislative consequences in regard to these matters should not have to be asked in a democratic society. Some would say the Supreme Court is already making such judgements as regards the Charter or Rights and Freedoms due to the vague wording and ambiguous meanings in it. I would answer that two wrongs do not make a right.

If a government, responsible and accountable to its public wants, or



does not want, to enact something, to whatever degree, it should be done in a straightforward, honest manner and should include the public in the process. If elected politicians of this country cannot face up to their responsibilities on all issues, hard or not, rather than forcing them off on to appointed judges, they should resign and let someone else try. We do not need or desire a form of involuntary judicial dictatorship in this country.

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Premier Peterson, who has said in the past that the courts will define the meaning of the accord, recently said about an anti-Sunday shopping rally held in Ottawa, "Just because 1,600 people huddle in a hall on any side of any issue, those are not the people democratically charged to make decisions about the future of the province." I remind the Premier and his government that Supreme Court of Canada judges are not democratically charged either.

Another case of trying to play both sides of the fence has been the federal government saying on the one hand that it is OK for unelected, appointed judges to define the accord, while complaining on the other hand that unelected, appointed senators should not be interfering with legislation such as the drug patent bill passed by the democratically elected House of Commons.

At the first ministers' conference on aboriginal rights, native self-government was rightly not entrenched because the parties involved could not come up with a clear definition. A number of premiers rightly did not want it left up to the courts not only to interpret but also to define "self-government." Now our politicians owe it to the Canadian public not to leave definition of the accord up to the courts. If they cannot define the accord, then they should not entrench it either.

A number of politicians have said that any changes should wait until the next round of talks. Why wait? I am suspicious that if this flawed accord is entrenched, it will be the first and last time for unanimous first ministers' agreement on anything directly affecting the country as a whole and we will be stuck with it for ever.

Process of constitutional change: Some politicians said that public input into the constitutional amendment process was unnecessary as there had not been any such involvement in the past. Today, the public is more aware and wants to have a say in things that affect it. The Constitution, after all, is not the private preserve of politicians and expert witnesses. It belongs to and affects everyone.

With this present amendment, I believe it would have been better if the first ministers, after writing the accord, had not signed it but taken it to public hearings in their respective jurisdictions and then held another first ministers' meeting to write a final document and sign it. It still probably would not satisfy everyone, but using that process would have alleviated dissent by hopefully reaching a broader consensus from the public.

I recommend in this particular case that the government of Ontario make a constitutional reference to the Supreme Court asking for its opinions regarding unclear meanings of parts of the accord so we know what we would be getting before entrenching it.

The federal government did allow public hearings after being pressured. Those hearings were quite restricted, however; only four weeks, if I remember

correctly, and only in Ottawa. Basically, it was just a public relations exercise to politely listen to the public and then ignore it again. Federal leaders are allowing themselves to be ruled by politics rather than principles on this issue. They appear to be interested only in how much of the Quebec electoral pie they can get and hold on to.

I do not know if the public is being much better served provincially. Several provinces are not having any public hearings. As for public hearings here in Ontario, I congratulate Premier Peterson on being wise enough to change his mind about allowing hearings and I congratulate and thank the committee for, as far as I am aware, letting anyone who asked to appear before it attend. I do not know if this is perhaps just a better public relations exercise than on the federal level in that Premier Peterson keeps saying there will be no changes. I believe it is important that the Legislature not only listen to the public but also be seen to hear it.

Mr. Chairman: Thank you very much. We are always delighted when someone who is neither a lawyer nor an expert appears before us. We feel very much at home then, as we do not all fit into those categories either. I think also, as we have gone through the hearings, the number of individual citizens who have come forward is important. Frankly, one would hope more would feel welcome to do so because there is no question that one can always find the experts and people who are representing different organizations and groups. That is fine, but sometimes it is nice to get others who do not necessarily represent anyone other than themselves.

We appreciate the work you have put into your brief and your presentation. I wonder if I might start the questioning. You make the point in the last part of your paper about public participation and, fundamentally, how we go about constitutional change and reform and ensure that there is some kind of a process that allows you and others who are not first ministers or legislators not to dictate what the conclusion will be but simply to have a reasonable and fair hearing and to be able to say, "These are the things that I think are important."

I think it has been made very clear by virtually everyone who has come before us that we have to deal with a number of process questions. Have you given some thought to how you think that might work in an effective way? How do we ensure that interest groups, individual citizens and so on can make their points and how might we structure that so we have a process that will function?

Mr. McRae: In this particular case of constitutional amendment, a number of people have commented critically on how 19 1/2 hours of negotiations were used to bring about this document, implying that it was all rushed into. Defenders of that have said the constitutional amendment process has been going on since 1984, but it was not until 1986, I believe, that there were actual concrete proposals put forward by the government of Quebec, its five proposals.

For the public, what we need is to be able to have a finalized document that we can look at as a proposal, something to work with, rather than simply going out in a shotgun blast way and saying, "This is what we would like to see in the Constitution." The politicians could work out the basic structure or, as in this case, a specific structure and let the public have a look at it and have input into it and then go back and redraft, if necessary. In this case, there are three years for ratification, so there is time.

Mr. Chairman: I understand the point. I think you were saying that

they could have come out of the Langevin Block and said: "Hey, we think we've got something here. We think this is really good but we are going to go back and have a certain period of time for discussion."

What about at the front end as well? Is there a need, particularly if we get into ongoing constitutional meetings, whether every year or every other year, for some means for input before they get to that stage?

Mr. McRae: I would not have thought so before the Charter of Rights came along. Since it has been brought in, and it is such a new ball game and it is vaguely worded in a number of cases, nobody really knows just what the effects are going to be upon society, so it is an ongoing process.

In that case and in the case of this accord, which, unfortunately again, is vaguely worded in a number of cases, it should be an ongoing process as well, so that every few years or whatever, after the public has had a chance to see how it is working, there should be perhaps a reviewing process to try to correct anything that is seen to be not working properly.

Mr. Offer: I have not so much a question as a point of clarification. It seems that what you are saying is that we did have two documents. We had the Meech Lake document and we had the Langevin document.

Mr. McRae: Right.

Mr. Offer: You are not questioning the right of the first ministers to sit down and hammer out what was, in the first instance, the Meech Lake document. All you are saying, the way I see it, is that if the time period between Meech Lake and Langevin had been wider and there had been public process in that spot--

Mr. McRae: No, because as it turned out--

Mr. Offer: If not, then where do you see the public process coming in? It could have come in the middle there, and then what might have emanated is something that is like the Langevin agreement, or it might be something different. I am just trying to find out where you see is the best spot for the process to have public input.

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Mr. McRae: After the Meech Lake part of the accord--I would have liked to have had public hearings at that point but, in retrospect, in hindsight, looking back at it now, the Langevin Block part has a number of considerable differences to the Meech Lake part. I guess it is something like the free trade agreement: You have to wait until the lawyers have sat down and worked out all the legalities and you have a legal document. That is what happened with the Langevin Block part. So it would be after that that I would think the public should be able to have a say.

Mr. Offer: OK. I just wanted to get a clarification as to where you felt was the best spot for public input.

Miss Roberts: Thank you very much, Mr. McRae, for your excellent presentation. It certainly brings out many points we have been looking at, from your own perspective.

As a private citizen, you have spent a lot of time learning about the



Constitution, if that is what you wish to call our constitutional document. Have you thought about how we get the rest of the private citizens involved in this? I do not mean just the process itself. We have constitutional documents which you seem to be very well aware of. The charter itself has many problems. People are not aware that we have had a Constitution for many years. We have just brought it home and we are trying to make changes to it from time to time as well. How do we interest the rest of Canada in this nation-building?

Mr. McRae: Unfortunately, the vast majority of members of the public are pretty well wrapped up in their own lives, and there is a great deal of apathy. Quite frankly, a lot of people would prefer to be able to simply rely upon their elected representatives to take care of those things so that they do not have to worry about them. Personally, if politicians were perfect, which I know they are not--

Miss Roberts: Thank God. -

Mr. McRae: --and I could rely upon that, I would be quite happy not to be sitting here today. I would much rather be out fishing or working or something. As to how to get more people involved in the process, I think more and more people are becoming involved simply because of instant communications nowadays.

People sit down and have their supper while listening to the six o'clock news on television or they read the newspaper on their way to work on the bus or the streetcar. I think people are becoming more aware but, in a number of cases, there are people who will never get involved. They may sit at home at their supper table with the family and complain from here to high heaven about what the politicians of the country are doing but they may never get up from that table to go out and actually say it to their elected representative or to come to a meeting such as this.

It is just a reality. I think the only thing that can be done is simply to have public hearings such as this and advertise them so people know well in advance they are going to be taking place and that, if they wish, they can attend or send in a brief or get their two cents in.

Miss Roberts: But you do agree that somewhere down the road, from what you have said, the politicians, whether they be the premiers or the legislators, make the final decision; even if we went back and changed Meech Lake or if it stays the same, it is up to the politicians to make that final decision. You just want some input into that process.

Mr. McRae: Right, but also--

Miss Roberts: You are not suggesting a referendum or anything like that?

Mr. McRae: No, I am not suggesting anything like that. In this particular case, there is vague wording, ambiguous meanings that are going to leave it up to the Supreme Court judges.

Miss Roberts: As we do with the charter.

Mr. McRae: Yes, and as I said, two wrongs do not make a right.

Miss Roberts: That is right.

Mr. McRae: It is going to result in judges, who are appointed and

not accountable to the public, deciding legislative consequences. That is what I disagree with.

Miss Roberts: But you always realize that the legislatures have the right to change that law so it comes back into conformity with the charter.

Mr. McRae: Ordinarily, if it was simply a law made in the individual provincial government or the federal government, that would be the case. But in the Constitution, with the amending formula, it is not just the individual government that is involved. If this amending formula goes through, then in a number of cases it will need unanimous agreement. If the electorate of one province does not like some part of the accord as it affects them, they cannot simply say to their provincially elected government that they want it to change that part, because it would take all those governments to change it.

Mr. Chairman: Mr. McRae, I want to thank you very much again for coming this afternoon and setting out your views. As I think was clear from our questions, the issue of process has become one of some importance. Not that other matters raised in your paper are not, but one of the things we felt strongly about is that, at least as part of our mandate, we have to look at that so that we do not get into the same situation.

If we are doing this in some three or four years, it would be a delight to see you again, perhaps for different reasons, not that you are having to be concerned about that part of whatever the accord of the day might be but that you are simply putting forward views at that point about what you would like to see.

Mr. McRae: There is one question I would like to ask the committee members. After these hearings you are going write up your report and you will submit it to the government.

Mr. Chairman: To the Legislature. Our mandate in the motion that created us states that we must submit a report to the Legislature by the end of the spring session. Presumably, the spring session will end towards the end of June, unless honourable members want to stay longer. That is our mandate as a committee.

Mr. McRae: Do you think that if there is an overriding feeling, if the committee recommends changes, there is any chance that the government will make any?

Mr. Chairman: This is an ongoing process. We are in the middle of our public hearings. I think the government, indeed all the parties in the Legislature, will be very interested in seeing what conclusions this group, which is made up of members of all three parties, comes to. In that sense, we feel it is incumbent upon us to listen very carefully to what people are saying to us, to assess what they are saying. Then we are going to have to go away and think very hard about what we heard and come up with a report. All one can really say is stay tuned and, when it is all over, I hope you will feel that your presentation and our discussion today have been useful.

Mr. McRae: I thank you for the opportunity to at least get in my two cents. I think it is always best, if the public feels strongly about something, to let it verbally blow off steam than otherwise.

Mr. Chairman: Right. Thanks very much. We appreciate your coming today.



I now call upon Havi Echenberg of the National Anti-Poverty Organization to come forward. First of all, welcome. We are pleased you could join us today. We have all received a copy of the document you have brought with you. I will simply ask you to proceed with your presentation, and we will follow up with questions. Welcome.

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#### NATIONAL ANTI-POVERTY ORGANIZATION

Ms. Echenberg: Thank you. Rather than read this verbatim, I think what I will do is go through the major points in it so that perhaps we could leave a little more time for discussion.

I would like to make just two comments by way of preface. One is that despite the fact that I am from an organization, I am no expert either, and neither is anyone else in our organization. Deuxièmement, je vais faire mes commentaires en anglais, mais je suis certainement prête à répondre à des questions en français, si vous en avez.

I know that I sent to the committee a copy of our submission to the federal committee and I hope you had an opportunity to look at it. Essentially, we raised three major points: One is the shift in policy-making from normal legislative processes to federal-provincial conferences, which led not only to the Meech Lake accord but will also in future discuss economic issues on an annual basis at least; two is the fear that the federal government will be unable to impose minimum standards on the programs that it creates in areas of provincial jurisdiction; and three is that existing federal-provincial cost-shared programs might well become subject to the opt-out provisions of the Meech Lake accord.

It is the third one that I have focused on in here, and it is because when we made our submission last July, quite frankly, the last clause was conjecture. It was our best guess. Since then, we have found out, to our dismay, that we were right, and that is a little worrisome; or at least that government officials are behaving as though we are right. The example I have gone into in some length in here is the one of legal aid. If you will bear with me, I will go through it with you verbally.

Currently, legal aid in this country is governed by two different cost-sharing agreements. Criminal legal aid is governed by one that is nonexistent in legislation, but it is a global agreement between the Department of Justice and provincial attorneys general. There are also bilateral agreements that put it into place. It has quite high minimum standards and quite low spending ceilings. Civil legal aid is governed by the Canada assistance plan and agreements between the Department of National Health and Welfare and the provincial ministers of social services. It has absolutely no minimum requirements--well, there are actually a couple, but very few, and no spending ceilings.

The Canadian Bar Association's legal aid committee recommended in 1985 that these two programs be amalgamated. They, of course, would like to see the high standards required under the Justice agreements and the no-spending limits under the National Health and Welfare agreements, but that remains to be seen. There are certainly negotiations going on now between federal and provincial officials looking to amalgamation by 1990.

The reason this became relevant is that when I asked the question of



Canadian Bar Association members and of Department of Justice officials, and in fact of legal aid plan representatives in several provinces across the country, as to whether an amalgamated program would be subject to the opt-out provisions of the Meech Lake accord--in other words, would be a new program--no one could answer, which was a little bit worrisome. In fact, some of the Justice officials have speculated that this may be the first test case to the Supreme Court of Canada.

I think it is a particularly worrisome example, because we in fact have the people who drafted the accord, the Department of Justice officials, not being able to tell us whether the program will be subject to it and we have fairly high-profile and expert lawyers in the Canadian Bar Association legal aid committee not knowing whether it will be subject to the accord.

I would suggest, as I did to the federal committee, that perhaps no one knows precisely what this means, which I found reassuring. The average Canadian is no more in the dark than anyone else. It poses real problems because it means that even existing programs and the level of federal conformity and uniformity that we have are not safe.

The other example I have gone into briefly in here is the child care agreement. Our concern, which we put forward to the federal government last July, was that the opt-out provision could be used to bargain down what national objectives were stated. We gave the example that we knew federal government officials wanted to see a requirement for fairly tough provincial licensing standards within the agreement; it now seems those will not be there. In fact, again, the provincial governments are essentially saying, "If you don't like it, we'll wait until the accord is ratified; then we will operate on the opt-out and get compensation that way." It is an example of how we thought it would be used, both for new programs and for existing programs.

I have gone through as well in some detail, towards the end of this, some of our concerns about the absence of federal standards. I have said clearly in here, and I will draw it to your attention, that I think the Ontario government is one of the few provincial governments these days that is exceeding federal standards in federal-provincial cost-sharing agreements that affect poor people. So this is not particularly a concern of yours perhaps, other than an exercise of leadership and perhaps even moral leadership, if I can say that. In other provinces, provincial governments are not meeting federal standards. We are having to pressure the federal government to enforce its own legislation as it now exists. As of a Supreme Court decision last fall, individuals can take the federal government to court to make it enforce its own standards.

Right now, federal standards do provide protection for low-income people against what I have described in here as a mean-spirited attitude that sometimes results when provinces are faced with budget constraints. Their best way of trying to cut their costs is to somehow attack the people who are the victims of the downward economical cycle they are trying to deal with. That is our concern.

We are looking to the Ontario Legislature to provide some national leadership here and to say that low-income Canadians have a right to be protected from the whim of provinces dealing with constraint. The existence of federal standards provides that protection now, and in our view, is not likely to provide it in future programs and may not even provide it in existing programs as they are renegotiated or renewed. All of them are subject to renewal regularly: the health act, the assistance plan act, housing

legislation and agreements are all subject to regular renewal and so they could all be at risk.

Perhaps I will leave it there and respond to questions if there are any.

Mr. Chairman: Thank you very much. You have really underlined in the brief here, and I know from the earlier one, some specific examples; particularly at this stage of the committee's hearings, that is very useful because it helps us to keep thinking, "Now, how is this going to work or not work?"

Let me start off by asking you a broader question. There is a tendency, I think understandably, on the part of national organizations, and perhaps on our part, a certain query that comes because we are provincial, for us to get concerned sometimes that it almost appears as if there is a sense that the federal government knows best; it is the one that should be doing these things. Yet when you look at the record in a broad number of areas, some of the best initiatives have come forward provincially. Clearly, some of the worst examples exist provincially as well.

In grappling particularly with this section, it is an interesting one in that there are two things that happen; one is that for the first time, the federal government was given a role in shared-cost programs within the Constitution. By the same token, the provinces were given, if you like, some kind of constitutional protection, or at least there was some attempt at some kind of balance. We are talking about areas of exclusive provincial jurisdiction.

As you look at that and the number of the issues that have come up that have related to objectives versus standards, and I would like you maybe to comment on that phraseology, do you yourself or does your organization feel that in effect the federal government should have the sort of full responsibility to define standards and the provinces in effect would implement, or do you see that there is room, region to region perhaps, for some variation in the way certain programs might be delivered because one province has a different kind of makeup, maybe a lot more seniors or whatever the group? As you work your way through that conundrum, what conclusions do you come to?

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Ms. Echenberg: One of the points I make in the brief is that we are certainly not suggesting provincial governments should not take initiatives. In fact, provincial governments historically have taken initiatives and those have sometimes then been enshrined in federal-provincial cost-sharing agreements. We are not suggesting that the federal government should all of a sudden dictate to an extent that provinces do not have the power to opt out and create their own programs. Provinces have never been required to participate in federal-provincial cost-sharing agreements; they have only been required to meet federal standards if they want federal funds.

That is a really important comment to think about because our view is that there are only two reasons for the federal government to spend money in a provincial jurisdiction. One is to provide some kind of national social program that some provinces probably cannot afford on their own. That one, I think, will continue to be met under the provisions of the accord. The second one, though, is to provide a certain level of national uniformity and a certain equality of access; even the Canada Health Act which has the toughest regulations. I think we need only look at the current abortion debate to see



that the provinces have all kinds of leeway, more quite frankly than my board members, including the ones from Quebec, would like to see.

There has never been any suggestion that the provinces should not have room to manoeuvre. We are just saying that in return for federal dollars, there should be some kind of accountability and some kind of national standard set. It would be only a minimum standard. I go back to the point I made: With all the programs that matter to my organization, the Ontario government is exceeding the minimum standards and is not being penalized for doing so. Under the Canada assistance plan, there is no ceiling on what will be matched. The provincial governments can spend money on all kinds of things, and as long as they meet some very broadly defined standards, the feds will kick in 50 per cent. But other provinces are having a hard time just meeting existing standards and it is creating real hardship for low-income Canadians. I do not know if that answers your question.

Mr. Chairman: In that context, do you see a real difference between national objectives and national standards?

Ms. Echenberg: Yes, I do, and so did the federal committee in its interpretation and its document. I am told by people who were in the room, or who were briefing and being debriefed by the premiers in that room, that in fact a couple of premiers argued very strongly for the inclusion of the word "standards" and lost. I think they knew that meant they were settling for something much more diluted. I do not think there is any doubt about that. As I said, the standards that exist do not provide full protection as it is, but they at least provide a minimum level of service or criteria or eligibility across the country. I think even that is going to be lost.

Mr. Chairman: Short of amending that, are there other things that governments can do to take that clause and give it bite, or do you really feel it is the clause itself that has to be changed?

Ms. Echenberg: I suppose theoretically they could go on to define "national objectives" in some way that in fact made it read "standards," but I do not think there is any reason to believe they are going to. I think, quite frankly, in terms of the politics of this, that what happened was that when the "distinct society" clause came up, some of the premiers said, "If Quebec is going to get 'distinct society,' then we want this"--"this" being the right to compensation without having to meet federal standards. I think, in the horse-trading that went on, that was given to them.

There is just no doubt in my mind that they could go on to define "objectives," but that would not be part of the Constitution and would be subject to the whim of provinces. There is a level of mean-spiritedness in some provinces that is frightening and that, I think, has taught poor Canadians that they need federal protection.

Miss Roberts: If I might go back to your first page and the three major areas you spoke of, I know you appeared before the special joint committee in July of last year. Could you elaborate on the first one, the shift of policy-making away from the legislatures to federal-provincial conferences, resulting in policy changes that have not benefited from traditional consultation processes. Can you just comment briefly for the purposes of this record, because that is the process we are looking at, and say where it went wrong and where we can help with that.

Ms. Echenberg: It is not just in reference to the Constitution that



I make reference to that. As I said, I think there are increasing numbers of issues that are being dealt with in that forum. The amendments include the annual federal-provincial economic conference, which of course includes employment, interests rates and all those macropolicies that have a pretty severe impact.

I guess, at least at the federal level, the federal government has decided that, in its policy-making, it needs to hear from a number of groups of Canadians through their voluntary organizations, and in fact has set out to fund those organizations, including the National Anti-Poverty Organization. Over the years, there have been more or less refined consultation processes that have evolved. Some departments are better than others.

Miss Roberts: You are referring directly to the feds.

Ms. Echenberg: Yes. Again, with varying effectiveness, we often have a chance, not just low-income people and their representatives but a number of groups, to comment on legislation in its draft stages, to provide policy input and then of course, through the legislative process, to comment. I refer to the federal process because most provincial governments have not done the same thing. Most provincial governments have not funded interest groups they believe should be part of the policy-making process.

Consequently, as more things devolve into federal-provincial jurisdiction, including this very committee, our members across the country are not equipped and funded to have input into the policy process and they are relying on their national organizations to do it. If you are hearing from a lot of national organizations, my guess is that is why. NAPO does not have a provincial counterpart. Poor people, by definition, cannot afford to fund this kind of organization. Unless the government does, it is not going to exist.

We have had input. We are aware of what the provincial governments do. I have a staff of four. It is not easy, but we monitor to the extent we can. We rely on board members within the provinces. We try to collect data and have input. When it is moved to the federal-provincial conference level, when it is taken out of the legislative process, all our means of intervention are also gone. That is essentially what happens.

We have spoken with the federal-provincial relations office here, federally. I say, "If we could even just get a list of the meetings, we would at least have a chance to address them." We are told: "Oh, no, most of them are secret. We cannot tell you that," which is a little worrisome to us.

It is partly just an opportunity to comment on policy as it is being made. In the example I used federally, and I am not in a position to comment provincially as I have not been monitoring Ontario closely enough, I am quite sure that Mr. Wilson, the Minister of Finance, did not intend to pass two budgets in a row that hurt poor people, but he did. That was the net effect and the data show that. Had there been more consultation in advance with the Minister of Finance, which there now is, I would point out, that would not have happened.

It is an example that, if we do not have that input, all kinds of inadvertent negative effects can end up in policy. When it is in a federal-provincial conference format, there is no consultation in advance. It is all happening in a room that is closed off and we just do not have those opportunities.

Miss Roberts: Do you feel that a conference should go on anyway after you have had your input on a national level, if that is where you want to be, so that you have your input and then the federal-provincial people get together, or do you feel the power should be with the feds?

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Ms. Echenberg: No, I am quite happy to see federal-provincial conferences. What I am not happy to see is policy sort of hatched in a closed room, without an opportunity to hear from individual Canadians and the organizations they form to comment on policy on their behalf. Traditionally, until now, this is what happens at federal-provincial conferences. The agendas are not public, which they certainly could be. You could put the agenda out there and say: "This is what's on the agenda. Here's what we're going to talk about. If you want to provide your comments, do it by such and such a date and we'll go into the conference with them." That has not happened. That does not exist.

I suggest to you, as a provincial committee, that if the provinces want to play a stronger role in the formulation of what traditionally has been mostly federal, like economic policy, then they might want to think about having to fund interest groups to provide that input for them, because it does not exist. There are not a lot of provincial interest groups that are well funded and can provide some policy analysis for you.

Mr. Harris: Thank you for the presentation. I have one question that maybe does not even tie into these questions; I think it does a little. I am really shocked that you tell me there are in Canada today provincial governments which are mean-spirited and can get re-elected.

Ms. Echenberg: Are you really?

Mr. Harris: I am. I do not see how you can get re-elected in Canada today anywhere if in fact you are mean-spirited. When you described Michael Wilson, you said Michael Wilson hurt poor people.

Ms. Echenberg: Unintentionally.

Mr. Harris: I am taking from this that there are some governments which mean-spiritedly go out of their way to tromp on the poor. I really find that hard to believe, that they can do that and get re-elected in Canada today.

Ms. Echenberg: I could give you a dozen examples. My favourite one is probably that we have--

Mr. Harris: Well, give me some. I want to hear who these guys are and how they--

Ms. Echenberg: We have somewhere between 100 and 200 people in Saskatchewan who have been cut off social assistance for refusing to participate in work programs which, by the agreement between the province and the federal government, were supposed to be voluntary in nature. We could start with that. I think that is pretty mean-spirited.

Mr. Harris: So you think that government, in a mean-spirited way, said: "We're going to get you poor people. We're going to take this money away from you. We're going to stomp on you."

Ms. Echenberg: The social services minister has said that poor people are lazy and abusing the system and that he is going to kick them off unless they take these jobs. Yes, he has.

Mr. Harris: So you think he is doing it in a mean-spirited way? I do not know the guy and I do not know the case. But you really believe he is not acting in what he thinks is in the best interest?

Ms. Echenberg: Well, he is acting to reduce the deficit. How he would go about it and how I would go about it are different.

A better example which was very public was the Premier of British Columbia being prepared to impose his morality only on poor people. I think that was pretty mean-spirited. He was prepared to provide abortion to anyone who could pay, but if you could not pay, then his morality ruled. I think that is mean-spirited.

Mr. Harris: So you think that his stand on abortion, his stand that the province would not fund abortion under the principle that he felt it was not a medically necessary service and therefore did not have to be covered, was a mean-spirited tack to get at poor people?

Ms. Echenberg: I think that was the effect of it; I think the effect was mean-spirited. I think when it was pointed out to him, he said, "Too bad."

Mr. Breaugh: I have a couple of things. Most of us, I think, would agree with what you are trying to do. I have a little problem I want to share with you, which I have had with a couple of the groups who have talked here. In many ways, it is the same argument about the standards and objectives and all that.

I will start by saying that one of my first experiences in government was around this kind of stuff, where we went from a municipal government into a regional government. We tried to extend services into a different area, a slightly more rural area. Of course, in our municipality, in the city of Oshawa, we had established all these very carefully defined standards for our performance: about response times for fire departments, that they should be able to get there in three minutes; response times for police patrolling; availability of social services, child care facilities, senior citizen facilities, a whole range of standards.

The problem that we ran into was that when we took our urban standards and applied them to the rural areas of the new region, it became apparent to us in a hurry that this was ridiculous. The first sign of it, oddly enough, was farmers phoning in saying: "What the hell are these police cars doing driving up and down my lanes? There is no need for them. It's silly." It became apparent to us that what was a very good urban standard, probably quite the nation's norm, did not apply once we moved five miles outside Oshawa.

This is where I have the problem about getting all wrung out with standards and objectives being set at a national level. I really have to say that in my own political experience, every time I have to deal with the federal government of Canada, my teeth go down another quarter of an inch or so. It is very frustrating to try to deal with people who have set up--I do not want to be unfair, but it almost seems in splendid isolation from the rest of the world. They set their own standards and they decide how to go about things. Even if it is clearly the most idiotic way to proceed, it is of no concern to them. They do not report to anybody. They report to Ottawa.



I do not share your desire to get to a federal standard. I appreciate the point you are making and I am looking for a way to find some common ground here. I appreciate the notion that, I think, most federal governments would want to know how a province is spending their money. They may use standards, they may use objectives, they may use a number of criteria for laying out why they are going to give you \$4 million or \$20 billion or whatever it is.

I do not want to get hung up on the idea of setting a standard, because it seems to me that if we did that, we would be inviting trouble. If the model is that the federal government of Canada sets exact standards for performance in almost any field, my experience with that is a sad one. It does not work particularly well. I want to get your feedback on that, because I know you will have a different side to the story.

Ms. Echenberg: Far be it from me to defend the federal government: let us start with that. I too come from a municipal background. I think we are talking about different things when we talk about standards.

A member of the Prime Minister's staff gave a speech in public in which he said that the Meech Lake accord would not in any way affect the formulation of social policy in Canada. When I asked him publicly, following his speech, whether we were now negotiating the Canada Assistance Plan Act, whether the federal government would be allowed to require the provinces to establish an appeal procedure, whether that would be considered a standard and beyond national objectives and whether the provinces would in fact be able to opt out, he said, "Well, yes, it is probably true in all likelihood we would not get an appeal procedure now."

That, to me, is a federal standard. It is not three-minute response times. It is not how many social workers there will be for X number of social assistant recipients. I cannot believe I used that example. Poor people generally do not like social workers anyway. It is a question of what is the minimum level of uniformity across Canada that we are going to require. What are the minimum things that people can count on?

The Canada Health Act, which is supposedly such a tough standard, is the example I gave earlier. We need only look at the response on abortion to see the flexibility. I can live with the level of standards required by the Canada Health Act. My problem is that under the Meech Lake accord I do not think that is going to be possible. There is already a lot of flexibility allowed. I guess we are just saying that we do not want to see the status quo weakened and we are convinced that is going to happen under the Meech Lake accord.

Mr. Breaugh: Via that argument, I think I might come to a slightly different conclusion. The problem I want to put to you next is, in practical terms, what can we do that will help people? That is of more concern to me than whether we use the word "standards," "objectives" or anything else.

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In practical terms, I think it would be more useful to have something in here which clearly says all Canadians must be treated equally, which in essence is what the charter talks about, and to make it clear that you have a legal right to go to court to enforce that. For example, a person living in poverty in Newfoundland would have a clear, legal right to go to court to say, "The government of Newfoundland is not treating me fairly, is not treating me equally using federal funds for a program," just as, say, a person in Ontario might be able to do. That is the right I would want.

I do not want to get off on this argument about whether their standards are up to snuff, because I have seen the bureaucrats enter into the rooms and provide their arguments about whether they meet standards for things. I have seen long, long debates and more money spent on the debates than on the program in many cases, debates revolving around professional standards and responses and areas of need and services provided and all of that. My option is to see if we could find the legal right to see that you are being treated equally and fairly under the Charter of Rights. I prefer that one, rather than getting into this long debate about standards or objectives.

Ms. Echenberg: That legal right, as you have just pointed out, exists. As I pointed out earlier, the Supreme Court of Canada has now ruled that individuals in fact can take either government to court.

That is important, but I guess I will go back to the example of there being somewhere between 100 and 200 people in Saskatchewan who have been cut off social assistance in the last few months. Certainly the federal minister's response was that they could appeal, which they have done, and most of them have won on appeal. Some of them have not. Yes, they can now go to court, but in the interim they have no income. Right? None. All the legal rights in the world do not put food on the table and do not put shelter in place.

That is not to mention the concerns I have about legal aid, which are in the brief, and what might happen to it under the accord, so that in fact that poor person might never get a lawyer to represent him in a court. I suggest to you that it is highly unlikely that any legal aid plan would cover that kind of appeal, that kind of legal challenge, right now. That is a problem. Maybe we can enhance the legal aid plans, although you certainly cannot set federal standards now. It is sort of a circuitous argument. The legal rights are there and they can be used, but litigation, by and large, does not serve poor people very well.

Mr. Breaugh: Exactly.

Ms. Echenberg: It may work for middle class people.

Mr. Breaugh: Let us say I accept your argument totally and we move an amendment and the rest of the world agrees with us that there has to be standards in here. I have been in politics long enough to know that there is not a bureaucrat out there worth his salt who could not take our definition of standards and just wrap 8,000 pieces of paper around it, and while they are diddling away in their offices, somebody is starving to death out in the hall. I know that to be true.

I could win the theoretical argument that we set standards. Meanwhile, while we are trying to resolve whether they meet a federal standard or not, the poor will still be out in the cold. They may or may not get a lawyer and go to court to resolve that, but I am doing them no good by setting standards. That is a bureaucrat's game.

Ms. Echenberg: My board of directors would say that what you are doing, if you allow for the creation of federal standards in return for federal dollars--and I think it is important to point out that is what we are talking about--is giving them a second line of defence. OK? It just comes back to whether or not provincial governments can be mean-spirited. Certainly right now I can tell you that low-income people in the three westernmost provinces see the courts as a better way to defend their rights than they see appealing to their governments.



Mr. Breaugh: I agree.

Ms. Echenberg: They are using the federal standards to try to force their provincial governments to act.

I will just point out that we are one of the few national social policy organizations that came out on this very strongly, and it is because when I spoke to my board members in Quebec, which is where most groups ran into problems, and asked, "What do you want me to do on this?" they said: "We remember Duplessis, and we know what is happening right now with welfare in Quebec. If we don't have federal standards to pressure our governments with, we're in trouble."

Mr. Breaugh: I appreciate that.

Ms. Echenberg: All I can tell you is that their experience on the ground is, even outside courts, even in the advocacy process and the lobbying process, federal standards helped them make their case. That is what they tell me. So it does help.

Mr. Breaugh: Let us conclude on this. I do not disagree with you for a minute. It is just that it is a place where I would choose my ground differently from yours. I understand the argument about whether they are making federal standards is a good one. For a bureaucratic mind, that is the mindset. That is the way you think, and those are the criteria you use to measure almost everything.

In practical terms of actually helping poor people across the country, I do not think we are doing much for them that way. It is just my own political experience of trying to deal with things like standards and criteria, all of that. That has been where most of my frustration has emerged. That is a game which does not do any of the people I represent any good. I admit that when we argue whether the program does or does not do what it is supposed to do, people always want measuring sticks in here: What are the standards? Do you meet those? But it really has nothing to do with people's needs. It has to do with bureaucrats' arguments.

Ms. Echenberg: Perhaps, as a final comment, I will just say poor people are so used to having to jump through a million hoops and meet a million requirements that they are used to using those kinds of sticks.

Mr. Chairman: Just as a comment, and perhaps you will want to comment on it as well, it seems to me one of the things which comes up here as we look at some of these issues is to remind ourselves that if at times people have problems with the bureaucratic process--maybe I should say this as a former bureaucrat--the question of political will is awfully important.

In the discussion you were having, in a number of instances I would still argue, Meech Lake or no Meech Lake, if there is national will and political will for a certain program, there is a political dynamic and a political process out there that, quite frankly, will go through a constitutional amendment, over it, under it, around it. The dynamics of any of these major programs we talked about--medicare, CAP, what have you--there were all kinds of built-in institutional reasons why we should have had them or they might not have been realized. I am not saying your organization is saying this, but we want to be careful not to try to constitutionalize every problem, thereby thinking that it is resolved. "If we can only get something into the Constitution, it will happen."



I suspect that over the next few years we are going to see, in charter cases before the Supreme Court, some decisions whereby people will say, "Gee, that is not what we meant" or "That is not what we thought we were getting." Whatever we put into that Constitution, there is still a political process out there. You made the comment earlier about provinces perhaps funding certain organizations. Maybe one of the things that emerges in the light of Meech Lake is that it would be useful for your own organization to try to have a provincial body, if you like, because in effect the programs for the most part are often delivered there and that impact might be even greater.

That is not a constitutional matter, but we do not want to lose sight of the fact that whether section 106A stays or goes, there is still a very dynamic sort of mechanism out there, which is called good old politics. I think that if a government at Queen's Park, Victoria or Ottawa said, "Look, this is a social program, which we believe is of the highest importance," you proceed and do what you can to implement that.

Ms. Echenberg: Yes. I feel the need to comment because what is at issue here is that what becomes constitutionalized is the right of the province to receive compensation even if it does not take part in the program as it is spelled out. That is what is new and important.

The example I give is that of civil legal aid in Alberta. Alberta has chosen not to participate in the legal aid section of CAP. They have chosen not to do it because they do not want to have to define a level of need in the social assistance legislation. They cannot get their social services minister to do this. The justice people would like it to happen. Consequently, poor people do not have the same access, essentially, to legal aid in Alberta as they do elsewhere. That already exists, but my concern is that under the Meech Lake accord, they would receive money anyway--right?--that they are now not getting. That is the concern.

Mr. Chairman: I guess that may be the part that is still--

Ms. Echenberg: They can say they are providing legal aid and they are, but they are doing it with a million barriers.

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Mr. Chairman: It may depend there, I suppose, on how one has defined the objectives. I agree that is not perfectly clear, and I think perhaps we really will not know until we get through a few programs. My only point is that I think there is still the element there that is awfully important and we must not forget it, which is the political will of that government in determining to do that. I appreciate the point.

That has been a very interesting exchange. We thank you again for the specific examples, because I think as we come to review this later, you have given us some specifics about which we will want to get some answers from some of our own people, in terms of how that dynamic might work. We very much appreciate your taking the time and coming to us. Perhaps we will see you or your colleagues in a provincial perspective over the next little while.

Ms. Echenberg: Thank you.

Mr. Chairman: If I might call on Gordon Robertson to come forward, it is a pleasure for the committee to welcome you here. We certainly are pleased you could join us. Your many years of experience with the federal

government will be particularly helpful to the committee as we look at some of the different issues.

We are aware, of course, of your presentation before the Commons-Senate joint committee but we felt, particularly at this stage in our hearings, that it would be helpful if you could share some of your thoughts on the accord itself. Then we could follow up with questions in relation to your own experience in the federal government and your experience with a variety of constitutional discussions and agreements and see where that leads us as we find our tortuous way through this whole process.

HONOURABLE GORDON ROBERTSON

Hon. Mr. Robertson: I am delighted to have the opportunity to appear in front of this committee. In getting ready to do so, I gave some thought to what I might say that could be of most relevance and use to the committee. It seemed to me that it was very much in line with what you, sir, have said: things relating to my experience in constitutional discussions and federal-provincial relations. Perhaps I could start with that and then leave it to the committee to ask any specific questions they might want to.

As far as the experience is concerned, I think it may be of some value in relation to some of the questions that are most important at this time. My experience has been an unusually long one. I think I have been present at all the constitutional discussions from January 1950 to 1979. I do not know whether there is anybody else in the country who has been present at as many of them, and this perhaps has given some background.

The initial ones I attended, in January 1950 and September 1950, were when Mr. St. Laurent was Prime Minister of Canada, Mr. Frost was Premier of Ontario and Mr. Duplessis was Premier of Quebec. The next significant one was 1964-65, with a new array of actors. Then, from 1968 to 1979, there was pretty well a continuous session of constitutional discussions with interruptions from time to time.

As far as other federal-provincial negotiations are concerned, I have an equally long experience--not quite as long--from the federal-provincial conference of August 1963 through again to my retirement from the public service at the end of 1979. I think I was present at virtually every federal-provincial conference of first ministers.

It is that kind of background I think might perhaps give some experience which would be of use to the committee. I have tried to consider what that experience suggests which may be relevant to the situation with regard to the Meech Lake accord, and it struck me that there are three points that perhaps I could mention.

The first is that in my observation the circumstances that can produce agreement on constitutional change are extremely difficult to achieve and very rare. In those years I referred to, I have seen when I was present only two occasions when there was complete agreement on a constitutional change. One was in 1965, when there appeared to be agreement on what was called the Fulton-Favreau formula for constitutional amendment. The other was in 1971, the Victoria conference, when we appeared to have complete agreement at Victoria. On both occasions that agreement fell apart. It fell apart in a matter of months in 1965. It fell apart in a matter of days in 1971. There has been one occasion when there was agreement of all provinces minus one: 1981.

During the entire period I have referred to, those three were the only occasions when there was close to complete agreement. Two of them fell apart. One of them lacked one government. We are left with the constitutional accord of 1987 as the only case in those nearly 30 years of constitutional discussions when it appears we may have the agreement of all 11 governments. I think this is of some relevance because it does suggest how difficult it is to achieve that degree of agreement and how unusual it is to have it.

The second thing that has impressed me in the various discussions on the Constitution is that it is virtually impossible, if not impossible, for a moderate federalist-oriented government in Quebec to appear to retreat. Once it has agreed to something, if there is pressure from outside to agree to something less, it is virtually impossible for a Quebec government to do it. Why? Because all the criticism, all the opposition is from the nonfederalist or more extreme side within Quebec, and it becomes politically impossible to withdraw. This was shown in 1964 or 1965, when Mr. Lesage was promptly attacked for what he had agreed to; it was shown in 1971, when Mr. Bourassa was attacked for having agreed to the Victoria conference on the Constitution; and it is shown today when Mr. Bourassa again has been attacked provincially for having sold Quebec out in agreeing to the Meech Lake accord.

At the present time, of course, Mr. Bourassa has been able to go further than the agreement. He has the agreement of the Legislature of Quebec to the accord. On the basis of experience and what I know of Quebec and what I have seen there, I would say it is absolutely impossible for Mr. Bourassa to go back to the Legislature and to say to the Legislature that he wants an amendment to accept something less than what is in the constitutional agreement.

The third thing that struck me as important in my experience and perhaps very relevant to this committee is the importance of the role of Ontario. I do not know whether it is generally recognized in Ontario how it is considered to be--not consciously, but seen to be--so very much the balance-wheel in Confederation. Mr. Robarts in my experience was the one who understood this best. He operated very much on the basis that Ontario had not simply a provincial interest but a national responsibility to operate as the balance-wheel in federal-provincial affairs. That is why I think that what Ontario does about the constitutional accord is going to be more important than what any other province does; although all have to agree, the Ontario position is terribly important.

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Another thing that has struck me about Ontario's role is the way Ontario is seen in Quebec. Ontario is seen in Quebec as being the voice it so often is looking for but finds so hard to find, the voice of English-speaking Canada. It is a sort of frustration to them that there seems to be no place where there is a representation of this other culture, English-speaking Canada, which they look for. Ontario is the one they look at most as being that. Again, I think what Ontario does, from the point of view of Quebec, is very important.

Coming to the Meech Lake accord itself, you suggested, Mr. Chairman, that I might express some views from my own perspective. As I see the Meech Lake accord, there are a lot of warts on it. There are a lot of things I wish were not there, a lot of things I would prefer to see changed, but for the reasons I have mentioned, my own assessment is that it cannot be changed. It cannot be changed now in advance of agreement. If it is agreed to and entered



into the constitutional fabric, there is a process of amendment that will go on and possibly some changes can come about later. I do not think it can be changed between now and completion of the process on constitutional amendment.

If that is correct, the question is whether it should be accepted or rejected. I have said there are a lot of warts on it, a lot of things I would prefer to see changed, but if I have to choose between acceptance and rejection, and I think I personally do, I come down clearly in favour of acceptance for several reasons.

The most important reason relates to national unity, the unity and integrity of the country. I think nationalism in Quebec is something that is constant. It is always going to be there. It is going to have varying intensity, stronger and weaker, but it is never going to be absent. There is nothing surprising about this because it is a completely distinctive culture, quite different, and has its own sense of identity. In many ways, the remarkable thing is that it is still a part of Canada, rather than having gone its own way.

If the constitutional accord is rejected, it is going to be a slap in the face of Quebec. It will be seen that way, particularly since the Legislature has approved it. That slap in the face would stand in the way of the participation of Quebec in all manner of things that are important in Canada. We saw this in the conferences on aboriginal self-government. Quebec did not participate. It was an observer. It will not participate unless and until the constitutional situation is remedied. That is one danger.

The greater danger, I think, is for the future. If we have a situation in which the accord is rejected, and we have that slap in the face to Quebec, and if we have a situation in which we operate on the basis of the 1982 Constitution to which Quebec is not an agreeing partner, I think it will be open to some future leader of the independence faction in Quebec to argue that the Constitution of Canada is illegitimate, is a Constitution that was imposed on Quebec, not agreed to by Quebec, and therefore does not and should not command the loyalty of Quebec. I cannot think of anything more dangerous for the future of the country than to have a situation like that.

To repeat, my own conclusion is that there is no real possibility of amending the accord before acceptance or rejection. The question is acceptance or rejection, and if that is the choice, acceptance is much the better course.

Those are all the comments I would like to make at the outset.

Mr. Chairman: That gives us a lot of room for questions and discussion. Let us follow that route for a bit and let us, for the sake of argument, accept your premise that one has to choose between accepting or rejecting. In looking at the groups and individuals who have come before us who have concerns either about parts of the accord or with all of it, I suppose one can begin to narrow down certain issues and problems. How would you see proceeding?

One of the messages that is coming back is that as a result of the charter, a number of minority groups of different kinds, whether an official-language minority, an antipoverty organization, women's groups or what have you, have seen in the charter protection for a variety of things that they now, rightly or wrongly, say is threatened. As you yourself have

said, constitutional agreement is difficult to reach, so they are saying, "If we don't force changes now, we're never going to have them."

How can the first ministers proceed to demonstrate clearly that those concerns have been heard and that there will be some process to deal with them? At the present time, in terms of the accord, the only two future items that were covered were the Senate and fisheries, yet certainly if we were to list major issues on our plate, there would be the question of the relationship of the charter to the accord, aboriginal questions and several others.

As we look at the accord, I think we realize it is not just a question of whether we say aye or nay, because regardless of what our answer is, there still have to be other things. There has to be some further route, either to go back to Quebec or to continue with the problems as other people see them. I wonder if you have given some thought to that and what kind of process we could be looking at in terms of dealing with it in the event it is accepted. How can one demonstrate that we can deal with these other issues, not in 10 years but in a much more expeditious way and in a convincing way?

Hon. Mr. Robertson: There is provision in the accord, as you know, for annual constitutional conferences, and item 1 on the agenda, as I understand it, is the Senate and item 2 is jurisdiction with respect to fisheries. Then after that it is other matters.

I would assume that the normal and desirable process would be to have these other items entered on the agenda for one of those constitutional conferences, the first or second. They are going to take place every year. I think this is a rather worrying prospect in itself, quite honestly. Just the same, that is what the constitutional accord provides for and I would think that at those meetings there could and should be discussion of these various points.

As far as I am concerned, the case is anything but proven that the constitutional accord of 1987 has the adverse effect on these various rights that has been alleged. I am far from persuaded that this is the case and I would think the first thing governments would engage themselves with at those meetings would be: "Is it true? Does the accord really have those adverse effects?" As I say, I do not find it myself; I am sceptical.

I do not see any problem about the process. The process is there and change can be achieved, if there is agreement. It will be very difficult.

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Mr. Harris: Mr. Robertson, you have put it pretty bluntly to us. Maybe you could go a little further as to what the implications are of the rejection of Meech Lake, if that happens, on Quebec. There are things you do not like in the accord but the alternative is worse. Could you go a little further? Where do you see the alternative leading?

Hon. Mr. Robertson: The worst alternative, assuming rejection?

Mr. Harris: Yes.

Hon. Mr. Robertson: I mentioned a few of the things I think would happen. I assume that if there were rejection, it would be with recommendation that X, Y, Z be changed, amended or rewritten, something like that.

Conceivably, I suppose, it could be with a resolution of approval by the Legislature of Ontario that would include some changes. I do not know how it would be done, but whatever it was, the matter would have to go back to a constitutional conference to see if agreement could be achieved.

Mr. Harris: I would like to go further than that, though. I am accepting everything you have said, that if the rejection has anything withsoever to do with Quebec's relationship with the rest of Canada, it would be politically impossible for Quebec to accept that.

Hon. Mr. Robertson: I think it would be politically impossible for the government of Quebec to go back in front of the Legislature of Quebec and say, in effect, "We must change what we have recommended to the Legislature," and thereupon move some amended resolution. The government of Quebec has been attacked already, quite sharply, for having gone too far, as I said, for having sold out Quebec.

The Parti québécois thinks and hopes it is in the process of resurrection. Mr. Parizeau has said that the program of the Parti québécois must be independence this year, independence next year, independence the year after. Nothing could play into the hands of Mr. Parizeau and the PQ better than for the government of Quebec to have to go back. I do not think it would. I think it would say flatly that it would not go back.

Mr. Harris: I am asking you to take it further. You see this as leading to Quebec's independence.

Hon. Mr. Robertson: It would gradually lead to that.

Mr. Harris: Many people have criticized this accord, saying they see it leading to Quebec's independence.

Hon. Mr. Robertson: I know, including my old Prime Minister, with whom I had long and happy relations, Pierre Trudeau. I have the greatest admiration for Mr. Trudeau. I have agreed with him on a great many things. I disagree with him totally on this. I think he is quite wrong. I think the constitutional convention is not the road to separatism. I think the failure to implement it may well be the beginning of a road to separatism, because as I said, I do not think the thing could be put back together again.

Mr. Harris: I think you have given me the best reason I have heard to ratify this. If all the things that many say are wrong with it prove to be wrong, then the worst that is going to happen is that we will not be able to live with that and Quebec will separate.

Hon. Mr. Robertson: Yes, that could happen.

Mr. Harris: It will happen quicker if we--

Hon. Mr. Robertson: I think the more likely thing that will happen, if I may say so, is that you would have these constitutional conferences that come up chewing away at the problem. If the case can be proven, if these arguments are right, you probably will get agreement on a change. If the case cannot be proven, you will not. But I do not think that would be nearly as bad as the consequences of rejection.

Mr. Harris: The thing that scares me--I am talking great generalities now, which we have not done very much in this committee. Usually



we are specific: "What does this mean? What does it mean to me or my group?" One of the generalities that worries me is that, let us say, neither route leads to Quebec separating--which is, let us face it, why we are here--but it leads to a view of federalism of the lowest common denominator. It is the lowest common denominator theory that Quebec views a federalism with a much weaker federal government and a much stronger provincial government than, perhaps, other provinces do. What has happened, it appears to me, is that other provinces have said we have found a way, finally--as you have said, since 1964--but to a large extent we have found the way by saying: "OK, we will accept your view of federalism. We want all the same powers that you want. That is the only way we seem to be able to agree to it." Is that price too much to pay?

Hon. Mr. Robertson: If I may say, I think I agree with a lot of what you have said, although this has been, to a fair degree, the process. However, I think one has to see it in perspective. Suppose one goes back to the beginning of the constitutional discussions in 1968. I take this series from 1968. Many people think they were started by Mr. Trudeau. They were not. They were started by Mr. Pearson in February 1968. From 1968 on to 1976, when the Parti québécois came into power, there was every kind of government that one could think about in Quebec: Liberal, Union Nationale and, finally, Parti québécois. What was sought was very much more extensive than what is involved in the constitutional accord of 1987.

The intention of those governments well before the Parti québécois came into power was a substantial change in the distribution of powers in sections 91 and 92 of the British North America Act. The present accord represents no change whatever in the distribution of powers in sections 91 and 92. Governments of Quebec before the Parti québécois very much wanted to have the capacity for Quebec to enter into international agreements and treaties. There is nothing of that kind in here.

So there has been over the years, and it culminated, in a sense, in Mr. Bourassa's proposals of 1986, a rejection or a stonewalling or a sidetracking of all sorts of very extensive Quebec demands. What we have here is a very moderate residual. So it is not as if the process has been one of conceding everything Quebec, even the federalist governments of Quebec, wanted. I think it is terribly important to keep that perspective of where we have been over all these years, and what has not been agreed to, in mind.

Mr. Offer: You indicated from your experience that, apart from this accord, there has never been a lasting unanimity. You alluded to two examples where there was at one time, but it fell apart. You then went on to a second stage where you said that the accord itself has, in your opinion, some problems, some warts--I think those were your words--but those could be addressed some time in the future.

I would like to get an idea from your experience, having expressed the fact that there has not been unanimity, apart from this particular accord, and having expressed the fact that there are some concerns which you have--without getting into them; we have also heard some of those concerns--is there a different spirit, a different sense, with respect to the whole constitutional reform, with respect to the attainment of unanimity which would have to be achieved, which was not there in the past but might be just evolving for the future?

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Hon. Mr. Robertson: I suppose it is possible that this could well be, that there will be a somewhat different climate. I think that somewhat different climate would be assisted if you got the unanimity once on the accord that is now there. I guess the other thing that might be different is that if one had the accord accepted and then was working on the specifics, a specific thing, one or two or three, it might be easier to get complete agreement than if one is working on a number of things.

There was, I guess, unanimous agreement on the insertion in the 1982 Constitution of the commitment to a series of conferences on Indian-aboriginal rights. I think that was unanimous. What I was referring to was the broader things in the Constitution.

It may well be that if one is tackling in the future the impact of, say, the charter on particular rights, it may be you will get unanimous consent and can get agreement. I would be going too far, and I would not have intended it to be going this far, if my suggestion were taken to mean that I think unanimity is going to be impossible on specifics. Unanimity on specifics can perhaps be achieved.

Mr. Offer: Carrying on with respect to the specifics, and without getting into the specifics but dealing with process, my feeling is that since the Charter of Rights and what has happened to this point in time, more people every day are becoming much more aware of how the charter and judicial decisions really do impact upon their lives, which was not there in the past. The numbers are continually growing in terms of people saying, "I not only want but I demand to be part of this process." I am talking about looking at the specifics.

Realizing that Meech Lake for some does have drawbacks, does raise concerns, and we have heard many of them, can you suggest a process which would bring into this particular process in a very real sense the concerns that people have with respect to a specific item? It does not matter which item.

Hon. Mr. Robertson: I think one can certainly envisage possibilities of doing that and I think it becomes easier to the extent that one would be dealing with specifics.

What was done in, I guess, 1980-81--I am losing my dates a little bit--on the charter itself was, as you may recall, to have sessions of a joint committee of the Senate and the House of Commons televised, in which there was discussion of the charter. It went on over a good many weeks, if not months. It was carried pretty well nationally, I think, on the parliamentary channel and it got a great deal of reaction from all sorts of people. I think it did provide the kind of sense of participation you are referring to.

I would see no reason why there could not be done in some fashion either that or the equivalent of that, if one had some consideration of modification of the Constitution in respect of the impact this particular thing has on women's rights, on francophone rights outside Quebec, where I gather there is a sensitivity, and English-speaking rights within Quebec. I can see the possibility of segmental concentration and publicized discussion on these things.

Mr. Breaugh: You are probably one of the best people in the country

to talk about how we do this. I think it is not unfair to say that the process so far has been a very private, men's club kind of process, where if they think about it afterwards, they tell you what they did. One of the things we would have to say is that that is the end of this process as we know it. I do not think these 11 men could go back to Meech Lake again to do this.

I do not know whether it is a consensus among all of our committee members here, but to be blunt, I do not share a lot of the concerns about Meech Lake that people have brought. It is not that their concerns are not valid, but I think they are things that can be corrected. I think there are flaws in the system that need to be worked on and I can envisage this kind of national network around a number of issues that has formed in this decade around women's issues, around poverty interest groups, around a number of things. These are people who are now used to dealing with governments as they prepare constitutional change. They know how to phrase amendments; they know about seeking consensus; they know how to appear in front of a parliamentary committee like this and present a brief; they know who to have on their boards; they know how to connect with governments at all levels.

One of the things we are struggling with a bit is that I do not think it is unfair to say that the process as we have known it so far is legit, legal and all those things but cannot be done any more, that it must change. Are we being wildly impractical to suggest things such as that each of our legislatures has a committee that is designated to do public hearings of this kind? We had a proposal this morning for a national joint committee of people from all of the assemblies in Canada to meet on a fairly regular basis to see if you can get a public identification of how the changes might occur, what is a priority and how to do it.

The end of the process would be that perhaps our first ministers would meet at a conference and they would say, "We've had hearings on all of these things; this is the wording that's been approved in our chamber and we will match that up with you." The end of the process is that the first ministers meet and ratify an agreement, and all of the public hearings and all of the access by the interest groups and the public at large is provided well in advance.

To me, anyway, one of the things that has caused a problem here is the way this was done. There is all this suspicion and there is questioning of intent and motives. Everybody else seems to know who double-dealt whom and who were the villains in the piece and who was unwilling to change. I do not know any of these things, but groups from across the country are reporting in to us that they know who did the dirty deed. They are not always willing to name that evil person in public, but the inference is clear in brief after brief that somebody did us in.

It would have been much better for them to do this in some forum in public, at least the ratification process. None of us is fool enough to say that this is all going to happen in public. If you put 85 people in a room and they have to discuss something and come to a conclusion, sooner or later some of them are going to gravitate to the back of the room or the men's can or the hall, and there they will decide, "Well, let's try it this way for a while and see how that flies."

I would be interested in your comments now about how we go about it from this point on.

Hon. Mr. Robertson: I do not think I would want to try to give a



prescription for that, but I do have a few comments on the questions you have raised.

I have given a good deal of thought to this, because one could not be involved in all those constitutional discussions without wondering whether there was not a better way of doing some of these things. I was not involved in the final ones, but I was up to 1979.

Two things seem to me to be relevant. One is, and I agree with you, that the whole thing cannot be done the way it was done, totally in private. On the other hand, the other side of it is that it cannot all be done in public. That is impossible. There is no way that negotiation can take place in public on constitutions, far less than on most other things, and most important things you cannot negotiate in public anyway.

It seems to me that what has to be done is to recognize a distinction between public education and presentation of arguments and considerations on the one hand, which should be public, I think--and it would not be too hard to have a public process, whether in each province and the federal government or a single one; it could be done in some fashion or other--but to distinguish that part, the presentation, the argument and the public education that goes with it being public, and then to recognize as legitimate and proper, privacy for the final discussion and decision-making process.

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I think we have suffered, if I may say so, from a failure to sort out those two different parts of the process, and I think there are two very different parts. We have failed to meet the argument against the kind of total privacy that you have been talking about. But I think we have also failed to really provide for the legitimacy of private, closed-door negotiation and decision.

The results of failure to recognize the legitimacy of that is that first ministers have had to resort to a lot of hole-in-the-corner processes which are very inefficient and dangerous. I have seen all sorts of constitutional conferences where the discussions took place in front of television. There is no way in which negotiations were going to be concluded in front of the television screen so the first ministers adjourned for lunch. The lunch lasted for four hours and they sat around lunch tables. They did not have any place to put their papers, they did not have any advisers to say, "Oh yes, sir, that is very right, but you are forgetting so-and-so," and they arrived at a decision that was dangerously flawed because of the fact they did it in an inefficient way. You would not really decide on the sale of a property in as inefficient a way.

In 1981, it is well known that a lot of the final negotiation took place in the hotel and at night, again in totally inefficient circumstances. I think the Meech Lake agreement was worked out in very inefficient circumstances. If it had been worked out in better circumstances, some of the warts that are there would not be there. I think there are processes that could be worked out which would meet the points you mention, with which I completely agree.

Mr. Breaugh: May I just conclude with this? I do not deny for a minute that every once in a while the folks are going to go away and shoot pool for an evening and, over the course of the game, discuss what they are going to do the next day.

Miss Roberts: With or without a coach?

Mr. Breaugh: With or without a coach.

Mr. Chairman: I should explain there was some pool playing going on earlier.

Mr. Breaugh: The distinction I choose to make would be that if, for example, tomorrow morning the federal Parliament said, as parliaments used to do, "We'll close the doors. There'll be no television cameras and no reporters in here. There will be no Hansard kept. We will meet in private. And when we have reached our decision, we will publish that--maybe," I think the people of Canada would say: "What the hell is going on here? That is not the way you do it any more. Perhaps you used to. Maybe at one time, when the King was banging on the door with a sword in one hand and a mace in the other, there was a reason for parliaments to do that, but there is not any more."

I would not deny anyone the right to private consultation, I would not deny them the right to discuss it in whatever way they see fit, but I do think that the agenda going in must be known. Part of the problem we have with Meech Lake is not that any of the component parts are brand-new, radical thoughts, but no one thought they would get fitted the way they were. A lot of people are very uncomfortable with the way they were kind of jammed together. They are not quite sure that it is wrong, but they are suspicious of the way the decision was made, uncomfortable with the way the wording was done and just unhappy with the process at large.

I argue that it is someone's job, probably ours, frankly, to begin to try to define a new and different process that allows people who have to make these decisions enough latitude, as I think any reasonable Canadian would give us, in terms of discussing what you do and negotiating back and forth, because I agree that the negotiating part is probably not very well conducted in public. I do not know of any labour union that is happy about negotiating in front of the cameras. You want to get behind closed doors and trade as evenly as you can.

But I do think the agenda must be public. There really cannot be surprises like this popping out the other end of this.

In some way, to some degree the decision-making process itself must have public visibility to it, because time and time again I find groups in here really questioning the motives of the people who probably thought they were up all night doing the job they were elected to do. People are accusing them of all kinds of evil deeds in here. I am not sure they are all guilty.

Hon. Mr. Robertson: I see the points that you have made. I would urge that if the committee is making recommendations on process--and I think it would be highly desirable if the committee were so to do--the recognized right of privacy has to include the right to do the negotiating that can see tradeoffs and that can see agreement arrived at, because this is going to be done in private. It will not happen in public. If it is public, it will not occur. If it is not recognized as something that can legitimately take place in private, it will take place in the kind of private ways that we have seen in the past, which are inefficient and which lead in many cases, I think, to wrong results.

What could be done, it seems to me, is to have a considerable open stage and process that involves all the presentation of the issues, the argument of

different positions and that sort of thing until, in a sense, one had identified what the problems are, what some of the basic positions are, what the considerations are and that sort of thing. One could have the private stage of negotiation and then one could have a public stage of presentation and explanation of the results.

In the case of Meech Lake, I guess one did not have either the first part or the last part. You simply had the central part, the private part. But I do think there has to be recognition of the legitimacy of privacy for negotiation and decision-making or else we will be in a very dangerous situation--dangerous because mistakes will be made.

In the Meech Lake accord, as far as I am concerned, the worst wart is the agreement that has been made with respect to the Senate. No change in the Senate was sought by Quebec. This is something that was introduced elsewhere: Why do I think it is the worst thing? Not because nomination of the senators will be in the hands of the provincial governments rather than the federal government in future--if anything, that is an improvement. But it is not Senate reform.

Senate reform in the future is going to require unanimity. That means that all the provinces have to agree. The provincial governments will now have the patronage that is involved in Senate appointments. Put those two together, the requirement of unanimity and the provincial patronage, which perhaps Ontario does not want--Mr. Peterson may not want it, but lots will want it--and it is going to be very hard to get unanimity. If we have an unreformed Senate exercising the total powers that the Senate has, we can be in a very difficult situation in this country in making government work.

I think that would not have happened if you had had a legitimate process of private discussion with people present. Officials can help. They can say to the boss up in front, "Yes, that looks very interesting, but this is what will happen and this is what is wrong with it."

I know. I have been in that role for many years myself. Even Mr. Trudeau did not think of everything.

Mr. Breaugh: Listen, do not feel bad. I made a mistake myself.

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Mr. Cordiano: I just want to deal with the situation as it presents itself now, following on your comments about what may result in Quebec if Meech Lake is rejected anywhere in the country by any of the legislatures. I do not want to comment on what is happening at the present time. No one really knows what will happen in a couple of provinces, but our attention has been drawn to some interesting proposals about companion resolutions.

Hon. Mr. Robertson: Companion resolutions?

Mr. Cordiano: Yes, resolutions by the native peoples. Correct me if I am wrong, Mr. Chairman. I think we had that yesterday. We have also had a couple of other interesting proposals which would not upset the accord itself but would go along with it. I am not sure if you are familiar with those.

Hon. Mr. Robertson: No, I am not.

Mr. Cordiano: We are trying to come to grips with that possibility



for passage of the accord with respect to the recommendations we might be making.

Hon. Mr. Robertson: Would the idea be that a Legislature might approve the accord but, in approving it, say that it thinks attention should be given to X, Y and Z?

Mr. Cordiano: Yes, something like that. I think the details have been spelled out in the briefs we had yesterday, and we could certainly approach it that way. I think that was the intention of the native groups. Also, there has been some suggestion that we have a reference to the courts prior to the passage of the accord.

Hon. Mr. Robertson: A reference to the courts on what?

Mr. Cordiano: On the charter or, in fact, the whole accord with respect to the charter and its supremacy.

The reason I bring these things up is to know, from your point of view, understanding what the situation is in Quebec, if this were to take place, could we withstand the pressure that might build in Quebec?

Hon. Mr. Robertson: If I understand rightly what the idea is on these companion resolutions or recommendations, if my understanding is correct, they would not be modifications of the agreement on the accord but would leave agreement on the accord to take place with a suggestion that immediate attention must be given to various things. I do not see any problem in that at all. It seems to me that this might be a very reasonable way to meet some of these concerns.

On the second one, again if I understood rightly, I would think that any reference to the courts would almost certainly result in a sidetracking of the accord and probably be just about as destructive as anything else one can think of because, in the first place, you would have to get agreement on the wording for a reference to the court. That would be extremely difficult. I would be astonished if all governments agreed that there should be a reference to the court. I do not think the government of Quebec would agree.

Mr. Cordiano: OK. What if individuals were to do that? Certainly, there are time elements involved, but if one government were to do that, what you are suggesting is that you have to have or should have agreement from other governments right across the country--is that what you are saying?--before there is a reference put to the court.

Hon. Mr. Robertson: A provincial government, unless I am wrong, cannot itself make a reference to the Supreme Court of Canada.

Mr. Cordiano: No, but in the spirit of having everyone agree that, indeed, this is going to be the actual case that is brought before the courts so that there is not an argument after the court makes its comments.

Hon. Mr. Robertson: Quite.

Mr. Cordiano: No, no. It was not this particular case we were interested in. It was another. How do we get to that kind of consensus, where everyone is going to agree?

Hon. Mr. Robertson: Really, in a sense, that is what I was in a way

trying to think through. This is a new idea to me. I have not heard this before. It seems to me that if there were to be a reference to the Supreme Court, it can be made constitutionally by the government of Canada. There is no way I know of constitutionally for it to be made by governments collectively, but the government of Canada could, of course, seek to get the agreement of the 10 provincial governments to a reference. In order to do that, there would have to be agreement on the wording of the reference and, of course, on the principle of the reference.

I do not think for a moment the government of Quebec would agree to participate in a reference. I think they would see this simply as a devious way to derail the constitutional accord without having the guts to say, "We're derailing it."

Mr. Cordiano: In effect, what you are telling me is that if you could not get agreement, and virtually all 10 provinces would have to agree with the federal government on the wording and the intent of what you are trying to do, there is no way you could have a reference.

Hon. Mr. Robertson: I do not think so.

Mr. McGuinty: I thank Mr. Robertson for his statement, which I think was very forthright, very clear and, I think, very simplified, and I do not use that term in a pejorative sense. I would like very much to be able to accept it. What bothers me a bit about the statement of Mr. Robertson is the imagery. Maybe I am being hypersensitive, as an old English teacher, but your image of the warts--a wart is something which, when on the body, is rather painless, cosmetic. It does not really interfere substantially with the wellbeing of the body.

I have heard concerns expressed by many people, francophones outside Quebec and English people within--in a brief this morning, for example, from the Protestant school board--and in very convincing and very compelling statements from the native peoples, from women and others about the phrase "distinct society," and others expressing concerns about whether federal programs of the kind we have had in the past, medicare, for example, could necessarily be brought about in the future. These, I think, are considered by many people with whom I have spoken as a very substantial part of the fabric of the system we have developed.

The interpretation of a significant number of people is that, notwithstanding the legitimate concerns we have about the implications of the accord in these areas, are we going to give in at this time in terms of ratifying the accord because of what is considered intimidation, if you will, at the hands of the province of Quebec?

My point is that to say simply that we should ratify because of the alternative is like Mr. Trudeau's reply to, "How does it feel to be 60?" The alternative is not nearly as attractive.

I find it difficult to find that convincing. I would like to, very much. It certainly would solve my own mental turmoil as I grapple with this and try to weigh and consider and evaluate and respond and feel for the considered views of those who have come before this committee. That is the problem I have, Mr. Robertson.

Hon. Mr. Robertson: Well, sir, under your eloquent criticism of my imagery about warts, I will change it. I do not know what I will change it to,

but clearly warts is not a satisfactory image in connection with it. Though I change the statement, I do find a number of defects in the Meech Lake accord, a number of things I do not like and a number of things I wish were not there or wish were somewhat different. Having said all that, as I said in my opening statement, believing as I do that amendment at this stage, before acceptance of the accord, is not possible, therefore, if I have to choose between acceptance of the 1987 accord, with these defects I think are there, or rejection, I opt strongly for acceptance of the accord.

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I do not myself see this at all as a matter of giving in to Quebec or being intimidated by Quebec. As I said, one has to see this whole thing in perspective, and if one sees the process, starting from, say, 1968, when the constitutional discussions started, up to the present time, the five points put forward by Quebec in 1986 are extremely modest in relation to the aspirations put forward even by federalist governments, not by indépendantiste governments. These are very, very modest, so one should not think this is a sort of blackmail demand. I think it is the most reasonable set of propositions one could possibly hope to get from a government of Quebec.

The other thing that I think has to be seen in perspective is what does that 1982 Constitution look like in Quebec. This is not really understood sufficiently in the rest of Canada. It looks like an agreement by English-speaking governments. The federal government was led by Mr. Trudeau, and Mr. Chrétien was the Minister of Justice. I recognize that. But they are really exceptions of federal persuasion, and as far as Quebec is concerned, the total provincial interest was quite different from what these people were representing at Ottawa.

They see it really as an agreement that was worked out, arrived at in the dark of the moon, without any Quebec representation that was provincial in character present, and finally accepted by all the other governments except Quebec. It was Quebec that had started the whole process and sought some change, so you had agreement, not only minus Quebec, but against Quebec.

You cannot expect the government of Quebec or the province of Quebec to be content with a Constitution like that. It has to change. I think in that double perspective of the serious deficiency of the 1982 Constitution, from the point of view of Quebec, and the modesty of the five points in relation to what has been sought at various stages, it is not a question of intimidation at all. I think it is a very reasonable set of requests.

Mr. Chairman: Mr. Robertson, on behalf of the committee, I want to thank you very much for having shared not only your experience but also your thoughts. I suppose after one retires, one of the nice things is that you do not have to carry a lot of the baggage from those days and can let a lot of these problems and issues float around. I think it then becomes very helpful for us to share in those reflections. I think you have been very frank in setting out the options as you see them and explaining the reasons for your choices. That has been very, very helpful for us this afternoon, and we thank you.

Hon. Mr. Robertson: Thank you very much, Mr. Chairman. One of the nice things about retirement is that you can say what you want.

Mr. Chairman: I was going to call on Mr. Breaugh's brother to join us at the table.



Mr. Breaugh: We have a new accord.

Mr. Chairman: Yes, this is the accord of former Liberals and present New Democrats perhaps.

I now call upon our next witness, Jean-Luc Pepin, if you would be good enough to come to the table. I should say, sir, that we enjoyed having you as a member of the committee. Just so those reading Hansard 25 years from now will understand what we were talking about, you had joined us at the table for part of our deliberations.

Mr. Breaugh: And you notice where he joined us.

Hon. Mr. Pépin: There was lots of room there.

Mr. Chairman: There will be no more comments from our colleague, I am sure.

I was reflecting, Mr. Pepin, and it struck me when you came in the room. I think it was March, it might have been February, but it was February or March 1964. I was somewhat younger and green behind the ears and was sitting on a stage at the University of Western Ontario with a Western student by the name of David Peterson and yourself. You had come down. It was a student meeting. I was there from the University of Toronto. We were supposed to be involved in some kind of debate. I cannot remember whether it was Peterson or myself who was supposed to be the separatist and who was the federalist, and then you had to comment on that after.

You were very generous, because I do not know what the quality of debate was like, but I remember that you gave a very impassioned defence of federalism, of the role of French Canadians in Ottawa. I think it is probably useful for us to remember that before 1965 there were many French Canadians arguing for a strong French presence in Ottawa, and not only arguing but getting elected and going out to do it. In welcoming you here this afternoon I put that on the record, that there is at least somebody around this table who was influenced very strongly by you many years ago. I am particularly delighted to welcome you to the committee this afternoon and to share your thoughts on the Meech Lake accord.

When we were talking on the telephone, I had suggested as well that your experience, particularly with the commission that you and former Premier John Robarts led in the late 1970s and some of the conclusions you came to in that report and perhaps their relation as well to Meech Lake, would be useful and helpful to the committee. We are very pleased you could be here and look forward to your remarks, and we will follow it up with questions.

L'HON. JEAN-LUC PEPIN

Hon. Mr. Pepin: Mr. Beer, I will not be diverted by the flattery. I came here to say three things, really, and I intend to say them as strongly and as clearly as I can.

First, I would like to say what I am going to say. I am going to talk, first, very rapidly--one second; as a matter of fact, I have already done it--about the importance of reading, and I am talking not to you, obviously; I am talking to the population. I made a number of speeches on Meech Lake in recent months. I can take pride in having made a speech on Meech Lake before Meech Lake took place, because I talked about what was coming ahead and I anticipated some of it.

I have made a number of speeches where I simply got up and read the text. It has a very comforting effect. I may have a certain way of reading it, which might help, but I just want to say--somebody was asking a question of Mr. Robertson a moment ago about what could be done to help the case. One of them is to simply help the people to get acquainted with it. I think, I hope, I wish that some day, having done a series on TV Ontario on how the federal government works, somebody is going to let me explain how Meech Lake works, because that would be very useful, do you not think? That is the first point I wanted to make. It is good to have read it.

The second point I want to make is that I have already made a number of analyses of commentaries, somewhat academic, on the subject. I came with my music and I am going to leave them with you because I do not want to repeat everything I have said there.

Je vais évidemment parler en français puisque c'est ma façon d'applaudir aux progrès qui se font en Ontario au point de vue du bilinguisme.

Alors, j'ai cinq documents avec moi. Le premier, c'est une petite étude que j'ai faite en classe sur l'idée de dualité. Vous allez remarquer que je parle de dualité quand je veux signifier le fait de l'existence des deux groupes, francophone et anglophone, et je parle de dualisme quand je veux exprimer la théorie attachée à ce fait-là.

Alors, je parle de la dualité et j'affirme ce que tout le monde sait, à savoir qu'elle est fondée essentiellement sur deux choses: premièrement, sur la réalité sociale, économique et politique et, deuxièmement, sur l'histoire. J'ai une série de citations ici d'historiens, surtout anglophones, qui mentionnent cette réalité de la dualité. Ce que je cherche à souligner, c'est que les mots ont changé depuis 125 ans, depuis 1867, mais la réalité de cette dualité, elle a été exprimée dans toute la littérature politique du Canada depuis le commencement.

On a employé des mots différents. On a dit «two races», qui était vraiment tout à fait détestable. On a changé ça, on a dit parfois «two nationalities, two nations». Après ça on a dit «two founding peoples»; ça ne marchait pas très bien. Alors, aujourd'hui on dit «duality», et on espère que ça va aller, mais on ne sait pas, peut-être que ça ne marchera pas ça non plus, et peut-être que dans dix ans on aurait un autre mot pour essayer d'exprimer cette réalité des deux groupements, francophone et anglophone. Mais la réalité de la dualité, elle est là depuis fort longtemps. La réalité également de la spécificité québécoise, elle est là depuis toujours également, et j'ai des textes ici qui font allusion à ça.

Comme on va vous demander dans votre rapport d'expliquer ce que veut dire «société distincte», j'ai apporté deux pages de mon texte de classe, l'une sur le mot «communauté» et l'autre sur le mot «société». J'essaie d'exprimer ici la différence entre «communauté» et «société». J'insiste sur le fait qu'une communauté est un facteur psychologique, la conscience de l'existence dans un groupe de personnes de facteurs communs, de spécificités communes, si vous voulez; tandis que le mot «société» se réfère à quelque chose de beaucoup plus structurel. Quand une communauté a un nombre suffisant, en quantité et en qualité, de structures - structures économiques, structures sociales et structures politiques - on dit qu'elle constitue une société. Quand elle en a un nombre suffisant, on dit qu'elle constitue une société distincte. Alors, j'essaie de vous aider à expliquer le terme «société distincte», qui n'est pas facile et qui n'est évidemment pas expliqué dans l'accord du lac Meech. Il n'y a rien, il n'y a aucune définition de ces mots-là dans l'accord du lac Meech. Voilà pour mon deuxième document.

Mon troisième document, et je vais aussi vite que je le peux, ce sont des notes de classe encore une fois - vous voyez que j'enseigne - sur la préparation de l'accord du lac Meech s'appelle: «Courte étude comparative de récents documents constitutionnels». J'ai écrit ça au mois de février 1987 pour mes étudiants, et je ne fais que citer des textes de M. Trudeau, des textes de M. Lévesque et de M. Johnson, des textes de M. Bourassa, les cinq points de Bourassa, des textes de M. Mulroney, des textes de M. Donald Macdonald, des textes de M. Turner, des textes de M. Broadbent et des textes de M. Peterson. J'ai écrit ça au mois de février, et je conclus:

«A moins qu'on insiste pour obtenir des définitions claires,» - if somebody wants clear definitions, we are in trouble - «et d'en connaître à l'avance les conséquences politiques, les mots "Québec société distincte," (je ne pense pas qu'il soit nécessaire de dire en quoi, d'ajouter le "comme foyer principal des francophones du Canada" qui naturellement déplaît du moins à l'Ontario et au Nouveau-Brunswick), et les mots "dualité canadienne" (linguistique, culturelle, juridique) (je doute qu'on aille plus loin), ces mots seront acceptés en fin de compte et remplaceront ceux de "spécificité du Québec" et "égalité des peuples fondateurs" mais n'en seront pas différents.»

Alors, on a remplacé par des mots qui étaient plus acceptables, des mots qui l'étaient beaucoup moins, mais la réalité n'a pas changé pour autant. Voilà le petit essai du mois de février.

Le quatrième document, c'est un discours que j'ai donné devant le Conseil pour l'unité canadienne à Québec, le 22 mai 1987. Et là, j'insiste sur deux choses. J'insiste, comme l'a fait M. Robertson il y a quelques minutes, sur la continuité dans ces débats depuis 1969, et depuis 1982 en particulier. Ma thèse, c'est que Meech a été préparé, de 1982 à 1987, remarquablement bien et que les différentes pièces ont été édifiées avant l'accord lui-même. Quand je suis d'une humeur partisane, je dis que tout ce que M. Mulroney a eu à faire, c'était de fournir une table et des chaises, parce que les idées avaient été préparées bien avant que la conférence du lac Meech ait lieu. Alors, là je donne des citations pour tout ça.

Je parle encore une fois de la dualité et de la spécificité québécoises et j'attaque, à la page huit, un des problèmes qui vous tourmentent, qui vous torturent j'imagine, celui des conséquences politiques de la reconnaissance de la spécificité québécoise, celui des conséquences politiques de la reconnaissance du caractère distinct de la société québécoise. Je dis ceci, c'est peut-être valable:

«Quelles conséquences "l'existence d'une société distincte québécoise" a-t-elle sur la vie politique canadienne? Rien de plus facile à démontrer. L'accord de Meech en donne en effet une illustration.»

La meilleure façon de montrer quelles sont les conséquences de la reconnaissance de la spécificité de la société québécoise, c'est de dire: Voilà, Meech est la conséquence de ça, et tout ce qui peut arriver dans l'avenir, ce sont d'autres Meeches.

«C'est en effet au nom de cette spécificité, de ses responsabilités dans la promotion des intérêts du secteur francophone de la dualité dont 85 pour cent vivent sur son territoire, que le gouvernement du Québec a demandé et obtenu un pouvoir élargi en matière d'immigration, un veto de fait sur les modifications à apporter aux institutions centrales de la fédération, un droit élargi de se retirer avec compensation de tout transfert de compétence des législatures provinciales au Parlement fédéral et de tout nouveau programme à frais partagés.»



Alors, Meech est une merveilleuse illustration des effets de la reconnaissance de la spécificité québécoise. J'insiste sur ça puisqu'il y a un tas de gens qui me disent: «Oui, mais quel effet est-ce que ça va avoir?» Bien, le même effet que ça a eu, c'est aussi simple que ça.

D'ailleurs, il n'y a pas que la constitution écrite qui rentre dans ces choses-là: «Le "caractère distinct" du Québec explique aussi, par exemple, la pratique établie, depuis Pearson», et surtout depuis Trudeau, je pense, «de l'égalité numérique et qualitative, en termes de l'importance des ministères qu'ils occupent, entre les ministres québécois et ontariens dans le Cabinet fédéral.» Il y a quelques mois, il y a avait douze ministres du Québec dans le gouvernement de Mulroney contre dix ministres ontariens. Le principe de l'égalité est un principe à peu près accepté. Je ne dis pas que c'est une convention de la constitution, mais c'est un usage. Présentement, il y a douze Ontariens et dix Québécois, mais évidemment, Bissonnette et d'autres sont passés pas là. Alors, on ne peut pas prendre ça pour une situation anormale.

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Mais j'essaie d'expliquer comment cette reconnaissance de la spécificité québécoise a ces conséquences dans la vie politique fédérale. Un autre exemple que j'en donne, c'est la représentation québécoise dans la fonction publique fédérale. Il y a une forte préoccupation dans la fonction publique fédérale pour que le nombre d'employés du gouvernement fédéral dans la fonction publique soit en rapport avec ce que représente la population québécoise dans l'ensemble du Canada. Ce sont là des conséquences de la spécificité québécoise.

Mon cinquième texte, c'est la même chose en anglais. Voilà mon deuxième point.

Mon troisième point maintenant. C'est pour vous dire que le contenu de Meech-Langevin, comme je l'appelle, comme vous l'appellez, si important qu'il soit, n'est pas tout. Il y a autre chose dans une constitution, autre chose dans la vie constitutionnelle d'un pays que les documents écrits. Un professeur français que j'aime beaucoup, qui s'appelle ??Georges Burdeau, dit qu'il y a dans une constitution des éléments para-, infra- et supraconstitutionnels qu'on ne peut pas mettre dans une constitution, et c'est beaucoup plus ces éléments infra-, supra- et paraconstitutionnels qui causent les difficultés que le contenu de la constitution lui-même, que le contenu de l'accord Meech lui-même.

Je vais tâcher de m'expliquer. Il est bien évident, premièrement, que la conception qu'on se fait du Canada influence considérablement l'idée qu'on se fait de l'accord du lac Meech. Si on pense qu'il y a au Canada déjà suffisamment et même trop de diversité et même trop de décentralisation, il est bien évident qu'on ne sera pas particulièrement sympathique à l'accord du lac Meech.

Le point de vue qu'on a sur l'accord du lac Meech dépend considérablement aussi, deuxièmement, de la conception du fédéralisme qu'on a, et ça, c'est très profond. Il y a des gens qui me disent - et je ne sais pas si c'est vrai et ça ne m'intéresse pas de savoir si c'est vrai - que le rapport de la commission Pepin-Robarts aurait influencé passablement de gens, plus chez les fonctionnaires que chez les politiciens qui ont travaillé à l'accord du lac Meech.

Pourquoi? C'est parce qu'il y a, dans le rapport Pepin-Robarts, une certaine attitude, une certaine conception du fédéralisme qui leur plaisait.

Vous savez quelle est cette conception-là. Le fédéralisme de la commission Pepin-Robarts était beaucoup plus un fédéralisme d'égalité, beaucoup plus un fédéralisme sensible au régionalisme, à la dualité, et beaucoup plus sympathique à l'égard de l'asymétrie que ne l'était le fédéralisme qui dominait au Canada depuis plusieurs années. Ce genre de fédéralisme plaît à certaines personnes et, comme par hasard, il plaisait particulièrement au nouveau premier ministre du Canada, et c'est pour ça qu'il a eu son influence.

Ce qu'on pense de l'accord du lac Meech dépend aussi beaucoup de l'opinion qu'on a de la politique. Il est évident que l'accord du lac Meech appartient à un point de vue beaucoup plus conciliant que le point de vue qui prévalait antérieurement. Quand je dis ça, ne pensez pas que je pense à M. Trudeau. Non, je ne pense pas particulièrement à M. Trudeau, je pense à l'atmosphère générale qui existait au Canada avant récemment, c'est-à-dire une atmosphère beaucoup plus sympathique à la confrontation.

Pour ma part, j'ai même de la sympathie pour M. Trudeau quand il se plaint du manque de coopération, quand il se plaint du manque de sympathie qu'il a eu de la part des autres premiers ministres dans la période où il a été premier ministre du Canada. Je le comprends très bien. Il a manifesté une patience énorme quand il a attendu 1982 pour obtenir ce qu'il pensait avoir eu en 1971. Il a fallu de sa part, à mon avis, une patience considérable. Alors, quand il se plaint de l'esprit de confrontation qui existait dans son temps, je pense qu'il n'a pas tort du tout. Mais heureusement, à cause d'un nombre considérable de facteurs, nous sommes passés dans une période marquée par beaucoup moins de confrontations; et, par conséquent, l'accord du lac Meech, qui vient en 1987, bénéficie de cette atmosphère beaucoup plus relaxe que celle de la période qui l'a précédée.

L'impression, l'opinion qu'on a de l'accord du lac Meech dépend aussi de l'opinion qu'on a des politiciens qui nous gouvernent présentement. Je souris en disant ça; j'espère que vous m'avez compris. Je ne veux pas discuter pour savoir si les politiciens de la génération à laquelle j'appartiens, étaient ou sont supérieurs aux politiciens de la génération à laquelle vous appartenez. Tout ce que je vais dire, c'est qu'il y a un jugement à prononcer. Pour ma part, je ne crois pas que les politiciens de la génération actuelle soient inférieurs aux politiciens de ma génération. Par conséquent, si je vois devant moi un texte auquel dix premiers ministres, peut-être un de moins maintenant, ont acquiescé, onze avec le premier ministre fédéral; un texte devant lequel un grand nombre de politiciens, un grand nombre de fonctionnaires, un grand nombre de constitutionnalistes ont dit du bien, eh bien, j'ai du respect pour un document qui a rencontré un tel niveau de consentement. Je pense que ça, c'est très important à souligner.

Finalement, l'opinion qu'on a de l'accord du lac Meech dépend également, comme l'a dit mon prédécesseur à cette table aujourd'hui, des priorités qu'on a. Pour ma part, il m'a semblé que la grande priorité de 1987, de 1988 et des années subséquentes, c'était de s'assurer que le Québec accepterait l'accord de 1982; il me semblait fondamental. Et les premiers ministres des autres provinces l'ont accepté également. Par conséquent, dans la masse de choses, de points politiques qui méritent une analyse constitutionnelle au Canada, le retour du Québec à la table constitutionnelle était prioritaire et il fallait s'occuper de ça d'abord. C'est ce que M. Bourassa a fait valoir devant les autres ministres des provinces et c'est pourquoi ils se sont entendus sur cela.

Si vous me demandez ce qui me préoccupe le plus dans ce débat-là, c'est de voir qu'il y a un grand nombre de personnes qui ne semblent pas encore avoir compris que l'exercice du lac Meech, c'était essentiellement un



exercice québécois et que, par conséquent, on ne pouvait pas, à lac Meech, résoudre tous les problèmes concernant les peuples autochtones, concernant les femmes, concernant la division du pouvoir, concernant la réforme du Sénat, etc. Ce qu'il m'apparaît intéressant d'observer, c'est qu'il y a bien des gens qui discutent encore de choses qu'ils pensent, eux, auraient dû être incluses dans l'exercice du lac Meech et qui ne l'ont pas été. Pourquoi? Parce que l'exercice du lac Meech était essentiellement un exercice pour résoudre les problèmes du Québec.

Alors, voilà ce que j'avais à vous dire en introduction. Merci.

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M. le Président: Merci beaucoup. Nous allons accepter vos documents pour les étudier comme des étudiants.

L'hon. M. Pepin: J'ai apporté aussi un article qui est très intéressant et que vous ne connaissez peut-être pas. C'est un article du Devoir du 15 mai 1987 qui montre comment le concept de dualité s'est précisé depuis la commission Laurendeau-Dunton. C'est un bon article aussi.

M. le Président: Nous avons un problème en tant que comité, en ce sens que les gens qui viennent devant nous et qui nous expliquent les problèmes qu'ils constatent dans l'accord du lac Meech - qu'ils aient raison ou non, surtout parmi les groupes minoritaires, que ce soient les femmes des minorités linguistiques - pensent quand même qu'ils ont vraiment perdu quelque chose. Jusqu'à un certain point, une autre réalité existe, et du point de vue politique, nous devons aborder cette question. S'il y a beaucoup de gens qui pensent qu'ils ont perdu quelque chose et qu'il y a des problèmes majeurs et graves dans l'accord du lac Meech, l'accord manquerait donc une certaine légitimité, disons.

A votre point de vue, que peut-on dire à ces gens ou que peut-on faire comme comité pour essayer de leur montrer, d'abord, qu'on a entendu leur point de vue et qu'il y a un processus pour voir si le problème est réel; et, si le problème est réel, qu'il y aura une façon d'améliorer la situation, de faire des changements? Je pense que c'est une chose de dire: «Ecoutez, lisez l'accord, il ne dit pas ce que vous pensez qu'il dit». Mais il y a un autre aspect et c'est un aspect politique, à savoir s'il y a assez de gens qui pensent qu'il y a un problème, alors nous, les politiciens, nous avons un problème et nous devons essayer de trouver une façon soit de changer leur point de vue ou au moins de trouver une solution.

L'hon. M. Pepin: Il y a deux catégories de personnes qui peuvent se penser lésées par l'accord du lac Meech. La première catégorie, ce sont ceux qui auraient voulu soulever des problèmes constitutionnels et qui n'ont pas pu le faire parce que l'accord du lac Meech ne portait que sur des problèmes qui étaient d'un intérêt particulier pour le Québec. Alors, à ceux-là, vraiment il n'y a pas d'autre chose à dire que leur tour viendra un jour, que l'accord du lac Meech ne porte pas sur le sujet qu'ils voulaient soulever. Cela, c'est la première partie. La deuxième catégorie, ce sont ceux qui pensent que l'accord du lac Meech a un effet indirect sur eux. Cela, c'est évidemment la catégorie la plus sérieuse.

M. le Président: Ou même direct, selon eux.

L'hon. M. Pepin: Donnez-moi des cas particuliers.



M. le Président: Je parle des femmes et des questions par rapport à la Charte.

L'hon. M. Pepin: Les femmes. Alors, c'est indirect, les femmes. Les femmes peuvent dire, d'autres peuvent dire que la reconnaissance de la spécificité ou du caractère distinct de la société québécoise aura sur eux certains effets, dans le sens que la spécificité québécoise, le caractère distinct du Québec pourra primer, pourra avoir la primauté, la priorité, à l'occasion, sur la Charte des droits et libertés ou sur la division des pouvoirs.

Alors là, c'est beaucoup plus difficile. Là, il faut expliquer tout ce qu'il y a à expliquer, c'est-à-dire premièrement, qu'il est dit dans l'accord lui-même, au paragraphe 2(4), que l'accord du lac Meech n'a pas d'effet sur la division des pouvoirs. Il faut dire que l'accord du lac Meech - je ne me souviens plus dans quel article - stipule que l'accord n'a pas d'effet sur la situation des immigrants, sur la situation des autochtones, sur la situation des communautés multiculturelles, etc.; bien qu'on s'interroge encore, comme vous le savez, pour savoir si le caractère distinct du Québec pourra avoir son influence dans d'autres secteurs qui ne sont pas indiqués dans la Charte des droits fondamentaux, ce sur quoi certains auteurs disent non et d'autres disent, comme M. Robertson le dit, qu'il faudra attendre les décisions des cours pour le savoir.

Mais il me semble que la meilleure réponse à donner, c'est que l'accord du lac Meech ne traite qu'un certain nombre de sujets et que des progrès ont été réalisés dans ces sujets-là; que ce n'est pas la fin du monde, l'effort de révision constitutionnelle va se poursuivre; que c'est merveilleux, pour une fois dans l'histoire du Canada, de ne pas avoir attendu une crise pour s'occuper des questions constitutionnelles; qu'on semble évoluer, on semble faire des progrès, et que tout ça est dans la ligne qui finalement sera avantageuse pour les intérêts qu'il défend.

M. Villeneuve: Merci bien, Monsieur Pepin, pour une présentation qui, étant donné votre vaste expérience, nous ouvre réellement les yeux.

La spécificité du Québec: D'après vous, vous ne voyez aucune réduction des pouvoirs fédéraux avec une telle classification?

L'hon. M. Pepin: D'abord, je veux simplement souligner que le mot «spécificité» est une invention des penseurs. Le mot «spécificité» n'est pas, je tiens à le souligner, dans l'accord du lac Meech. L'accord du lac Meech décrit une situation, il ne théorise pas sur une situation. La théorie vient après la description.

Quelqu'un m'a expliqué comment cette chose-là s'était passée, et son explication portait tout simplement sur le fait qu'il était plus facile de convaincre des gens par une description de la situation que par l'invocation de certains principes comme dualité, spécificité, etc. Alors, ce que fait l'accord du lac Meech, c'est de reconnaître, de prendre une photographie d'une situation et non pas d'en faire une théorie.

La spécificité du Québec, ou le caractère distinct de la société québécoise, a eu, aura et devrait avoir des conséquences constitutionnelles. Je vous en donnais tantôt un exemple. Pourquoi le Québec a-t-il, depuis X années - je ne dis pas un droit, c'est trop fort peut-être - autant de ministres dans le Cabinet fédéral que l'Ontario, malgré la différence assez considérable de population? Pourquoi? Est-ce que les Québécois sont plus ceci ou plus cela que les Ontariens? Sûrement pas.

Pourquoi a-t-on cette situation? Bah! C'est parce que historiquement, depuis 125 ans, la situation québécoise a été particulière, a été spéciale, a été différente. Si vous avez lu le rapport du comité de la Chambre des communes et du Sénat, vous saurez que les anglophones, ceux de votre parti en particulier, sont venus dire au comité: «Nous avons toujours admis que le Québec avait un caractère distinct, que ce n'était pas "une province nécessairement comme les autres", pas supérieure mais différente des autres». Alors, ce caractère distinct de la société québécoise a déjà donné lieu à des différences et puis va continuer à donner lieu à des différences.

Pourquoi le Québec a-t-il trois juges à la Cour suprême par droit statutaire alors que l'Ontario, qui a plus de population que le Québec, n'a pas un droit semblable? C'est par coutume que l'Ontario en a trois. Un beau jour, il y aura un ministre de la Justice qui dira: «Ah! Mais cette coutume-là, il faudrait peut-être un jour la débattre pour savoir si les Maritimes n'auraient pas droit à plus de juges à la Cour suprême». Pourquoi ça? Encore une fois, c'est le caractère particulier du Québec, la seule province qui utilise le droit français. Pendant longtemps on voulait tout simplement s'assurer que le droit français avait suffisamment de représentants à la Cour suprême pour qu'on puisse l'interpréter d'une façon valable. Oh, vous le savez très bien, peut-être que de moins en moins de questions de droit civil québécois vont devant la Cour suprême du Canada. Est-ce que ça veut dire qu'on va écarter les trois juges du Québec? Sûrement pas. Encore une fois, ça fait partie de ce caractère particulier du Québec.

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Je pourrais multiplier des exemples comme ça. Comment se fait-il qu'on est particulièrement sensible à s'assurer qu'il y aura une représentation quantitative et qualitative québécoise au sein de la fonction publique? Pourquoi ça? C'est une préoccupation de sensibilité qui relève du caractère un peu particulier du Québec. Je pourrais continuer à énumérer les cas.

M. Villeneuve: Le chef du Parti libéral, le premier ministre québécois, et M. Parizeau, eux deux entre autres, semblent nous dire que la spécificité québécoise va leur donner des pouvoirs considérablement plus élevés qu'ils n'en avaient dans le passé. Est-ce que ce fait-là n'enlève pas du poids au fédéralisme?

L'hon. M. Pepin: Ce qui préoccupe le plus M. Trudeau, si vous avez lu son témoignage, c'est que personne ne peut lui dire d'une façon claire et précise les conséquences qu'aura la reconnaissance de la spécificité québécoise. Alors, il y a des gens d'un côté, dit M. Trudeau, que je répète: «Oh, vous savez, les conséquences sont minimes». Il y a des gens de l'autre côté, M. Bourassa, M. Rémillard en tête, qui disent: «Les conséquences pourraient être considérables».

Ce que je dis, moi, est peut-être une réponse valable; vous en jugerez vous-même. Les conséquences dans le passé ont été importantes, assez considérables, les exemples que je vous ai donnés ne sont pas des exemples négligeables, et je pense qu'ils vont le demeurer. Mais de là à dire que, à la suite de la reconnaissance de la spécificité du Québec, il va y avoir un changement considérable dans la constitution, à mon avis, ce n'est pas évident, loin de là. Pourquoi ça? C'est parce que encore une fois, je le répète, la spécificité québécoise n'est pas une invention de l'accord du lac Meech, pas du tout. Ce n'est qu'une reconnaissance formelle de quelque chose qui existe depuis très longtemps et que les historiens du Canada et les hommes politiques du Canada reconnaissent depuis 125 ans.



Alors, on ne peut pas s'attendre que la simple reconnaissance en droit écrit d'une chose qui l'était presque en convention pourra du jour au lendemain apporter un changement énorme dans la constitution du pays.

Voyez-vous, il faut souligner encore une fois que la constitution d'un pays n'est pas seulement une addition de textes écrits; la constitution d'un pays est beaucoup plus large que ça. La constitution du Canada, en particulier, est faite d'interprétations judiciaires, est faite de conventions constitutionnelles, est faite d'accords entre les exécutifs, est faite de toutes sortes de choses autres que du droit écrit. Alors, le simple fait de prendre une convention, une interprétation de la constitution qui était, jusqu'à ce moment-là, conventionnelle et de la mettre dans un texte écrit, n'apporte pas pour autant une transformation extraordinaire de la constitution réelle de ce pays-là.

M. Villeneuve: Alors, en deux mots, vous ne voyez aucune réduction du pouvoir fédéral?

L'hon. M. Pepin: Je ne peux voir ni une réduction ni une augmentation. Je vois simplement la continuation d'une chose qui existe depuis 125 ans.

Je veux être plus précis que ça. Si vous me demandez quel effet cela va avoir, je vous ai déjà répondu il y a dix minutes que le meilleur exemple de l'effet que ça va avoir, c'est l'effet que ça a eu. Le meilleur exemple de l'effet que pourra avoir la reconnaissance de la spécificité québécoise, c'est l'accord du lac Meech. Pourquoi ça? Parce que M. Bourassa, répondant à cette spécificité, a dit: Il y a des choses que le Québec doit avoir, des choses, par exemple, au chapitre du retrait compensé; au chapitre du veto sur l'amendement des organes du gouvernement central; au chapitre de l'immigration. Il y a certaines choses que la spécificité québécoise commande comme politique au gouvernement du Québec, et on les réclame: «Si l'ensemble du Canada ne partage pas ce point de vue, dommage. Nous espérons qu'ils vont le partager; mais s'ils ne partagent pas ce point de vue, nous allons faire valoir que le Québec devrait avoir ces pouvoirs-là et nous allons demander des espèces de compensations pour y arriver.»

Voyez-vous, la beauté de l'accord du lac Meech, c'est que les cinq desiderata de M. Bourassa - et M. Robertson disait tantôt comment il pensait qu'ils étaient modestes, qu'ils ??étaient moins immodérés - ces cinq desiderata de M. Bourassa ont été jugés acceptables par les autres provinces du Canada, ce qui a fait l'accord. S'ils n'avaient pas été jugés acceptables, on aurait eu un problème.

Il y a un texte que vous devez lire. C'est le texte du sénateur Tremblay à la fin du plaidoyer de M. Trudeau devant le comité fédéral, dans lequel le sénateur Tremblay dit: ??«Je comprends très bien que M. Trudeau soit vexé du sort qu'on lui a fait, parce que», et il l'a répété plusieurs fois, «du temps de M. Trudeau il semblait continuellement y avoir une enchère. Quand on avait quelque chose, on voulait autre chose». Et M. Tremblay de souligner que la différence est que dans le cas de l'accord du lac Meech, M. Bourassa s'est présenté avec cinq demandes assez précises et qui ont eu l'air d'être jugées acceptables par la majorité des premiers ministres. Ce faisant, M. Bourassa a créé un petit peu un précédent dans le mode de négociation constitutionnelle au Canada.

M. Allen: Nous sommes très privilégiés d'avoir votre présence et votre opinion, M. Pepin, sur cette question très importante en ce moment. Je



veux vous poser une question à l'égard des francophones hors Québec. On aurait pensé que, de tous les groupes canadiens qui auraient aimé un document qui souligne la spécificité du Québec et qui peut-être augmente certains des pouvoirs de cette province pour promouvoir la société distincte, les francophones hors Québec auraient aimé un tel document. Mais, comme nous le savons, les organismes des francophones hors Québec ont déclaré leur opposition à l'accord du lac Meech. Avez-vous un commentaire sur cette situation remarquable?

L'hon. M. Pepin: Je ne suis pas conscient que les francophones hors Québec soient aussi fortement en opposition à l'accord du lac Meech que vous semblez vouloir me le dire; je ne suis pas aussi bien renseigné ou aussi mal renseigné que vous sur ce sujet-là. De toute façon, le sort des francophones hors Québec dépend de bien d'autres choses que de l'accord du lac Meech, et ceux qui pensent que l'accord du lac Meech n'est pas favorable à leurs intérêts devraient d'abord me le dire, ou le dire à la population en général. Voulez-vous me dire, vous, sur quoi ils pensent que l'accord du lac Meech leur est défavorable, aux francophones hors Québec?

M. Allen: Le problème, semble-t-il, est dans l'article 2, où on parle de la préservation des minorités, de la dualité des provinces non québécoises et, pour les Québécois, du pouvoir du gouvernement de promouvoir et non simplement de préserver la société distincte. Il y a donc, de fait, un contrat du sort des anglophones au Québec, par exemple, qui auraient peut-être la promotion de leurs intérêts par le pouvoir de promotion de cette société distincte et de la dualité de cette société, mais pour les francophones, par exemple en Ontario, il y aurait seulement la préservation. Il semble que nous nous retrouvions dans un musée, dans le passé; c'est le langage des quelques groupes qui ont présenté des mémoires devant notre comité. C'est dans cette terminologie de «préservation» contre «promotion».

L'hon. M. Pepin: Alors ça, c'est un peu complexe, mais laissez-moi vous donner ma réponse. La première, c'est qu'il faut savoir pourquoi il y a une différence entre «préserver» et «promouvoir». Quand il s'agit de la dualité canadienne, le texte de l'accord du lac Meech dit «préserver».

M. Morin: Excusez-moi, c'est «protéger».

L'hon. M. Pepin: «Protéger». Excusez-moi.

M. le Président: Et on souligne la différence entre le mot français et le mot anglais dans ce sens.

L'hon. M. Pepin: Alors, «protéger». Ce qu'on m'a raconté à moi, c'est que certaines provinces ne voulaient pas ajouter le mot «promouvoir», contrairement à ce qui arrive dans le cas de la spécificité ou du caractère distinct du Québec, où le gouvernement et le parlement du Québec ont la responsabilité de protéger et de promouvoir, seuls. Mais ça n'a rien à voir avec le Québec, ça. Ce sont les provinces qui n'ont pas voulu être tenues responsables de promouvoir les intérêts des francophones chez eux qui ont donné au Québec une raison également de ne pas vouloir promouvoir les intérêts des anglophones chez lui. Ils se sont entendus comme larrons en foire pour ne pas aller plus loin que de protéger. Mais je ne vois pas pourquoi les francophones hors Québec accuseraient le Québec de ce qui s'est passé dans ce cas-là.

M. le Président: Non, ils n'accusent pas le Québec.

L'hon. M. Pepin: Ils accusent qui, alors?

M. le Président: Je ne sais pas, mais dans la lettre de la Fédération... Etes-vous au courant de la lettre de la Fédération?

L'hon. M. Pepin: Non, je ne suis pas au courant.

M. le Président: Alors, il y a une lettre qu'on a envoyée aux premiers ministres, et que ce soit l'Alberta ou la Colombie britannique, peu importe, mais la Fédération dit clairement qu'il faut changer l'accord en ajoutant le mot «promouvoir», faute de quoi ils n'accepteront pas l'accord. Ils ont dit aux premiers ministres qu'ils ne donnaient plus leur appui à cet accord, sans ce changement.

L'hon. M. Pepin: D'abord, il faudrait discuter de la différence entre «protéger» et... est-ce que c'est «protéger»?

M. le Président: En français, c'est «protéger».

Interjections.

L'hon. M. Pepin: Ce que je voulais dire comme deuxième point, c'est qu'il est intéressant de voir que dans le projet de loi C-72, qui porte sur les langues officielles, l'expression «promouvoir» les deux langues officielles s'y trouve. Ce qui est assez intéressant à constater, c'est que dans un texte purement fédéral, le gouvernement fédéral n'hésite pas à utiliser le mot «promouvoir», ce qui laisse facilement croire que ce sont certaines provinces qui n'ont pas voulu l'utiliser au plan de l'accord du lac Meech.

Interjection.

M. Villeneuve: Il n'y a pas d'erreur là.

M. le Président: Je pense quand même que la question, c'est que les minorités linguistiques hors Québec, dans le passé, ont toujours accepté de faire des arrangements pour assurer au Québec sa place à l'intérieur du Canada. Cela, c'était très important, c'était même la chose la plus importante. Mais ce qu'on voit ces jours-ci, qu'on parle d'Alliance Québec, de l'Association canadienne-française de l'Ontario, de la Société des Acadiens du Nouveau-Brunswick ou de la Fédération des francophones hors Québec, c'est que maintenant ils nous disent que, peu importe ce que ça donne au Québec globalement au point de vue de la famille canadienne, il faut ajouter à l'accord le mot «promouvoir», ou bien nous, les minorités, pensons clairement que nous avons perdu quelque chose de si important que maintenant nous ne pouvons plus accepter l'accord,

L'hon. M. Pepin: Vous n'aurez aucune difficulté avec moi. Je suis de toute évidence en faveur de «protéger» et de «promouvoir»...

M. le Président: D'accord.

L'hon. M. Pepin: ...et de la dualité et de la spécificité québécoise. D'ailleurs, je comprends fort mal que la «protection» et la «promotion» du caractère distinct du Québec soient uniquement la tâche de l'Assemblée nationale et du gouvernement québécois. Cela devrait être aussi la tâche du gouvernement fédéral. Non seulement ça devrait l'être, mais c'est présentement la tâche du gouvernement fédéral que de promouvoir ce caractère

distinct du Québec, à preuve les exemples que je vous ai donnés. Il est évident qu'un meilleur texte utiliserait «protéger» et «promouvoir», autant sur le plan de la dualité que sur le plan du caractère distinct du Québec; c'est évident.

Mais comme l'a dit mon prédécesseur, si on veut réécrire ce texte-là jusqu'au jour où il soit parfait, les chances sont énormes qu'on n'y arrive jamais. Alors, il faut, je pense, accepter au point de départ que le texte ne sera pas parfait et qu'on passera le reste de nos jours à essayer de l'améliorer, avec d'autres textes qui ne sont pas parfaits non plus.

M. Morin: Je veux vous dire encore une fois que je suis très heureux de voir un autre de mes bons commettants comparaître devant notre comité. Monsieur Pepin, je vous remercie énormément d'être ici cet après-midi. J'ai eu plusieurs expériences dans ma vie, mais je n'ai jamais eu l'expérience de vous avoir comme professeur et je m'aperçois que j'ai manqué beaucoup. Alors, peut-être qu'après ma carrière d'homme politique, j'aurai l'occasion de vous écouter ou d'aller vous entendre à l'Université d'Ottawa.

Ma question est la suivante. Nous siégeons déjà depuis cinq semaines et la question la plus fréquente, je crois, que nous entendons, c'est sur le processus: la façon dont l'entente a été créée; la façon dont les premiers ministres se sont réunis, sans consultation, sans laissez savoir à qui que ce soit le contenu de l'agenda. Et là, tout à coup, par un miracle et par le Saint-Esprit descendu, on a dit tout simplement: «Voici, ça c'est l'accord, ça c'est l'entente». Dans les rencontres dans les prochaines rondes, croyez-vous que le processus que nous employons présentement est le bon processus, ou encore recommandez-vous un autre processus?

L'hon. M. Pepin: Merci bien de vos compliments.

La nécessité d'information dans une société n'est jamais atteinte, en ce sens que toujours, quand des gestes sont posés, quand des documents sont écrits, 95 pour cent de la population se plaint de ce qu'elle n'était pas au courant.

Pour les besoins de la circonstance, je vais prendre la thèse tout à fait opposée à la vôtre. Il n'y avait pas de raison valable, quand on regarde les discussions qui ont eu lieu depuis 1982, pour qu'au moins les gens qui suivaient ces choses-là n'aient pas prévu ce qui allait arriver. Je vous en ai donné un exemple dans mon cas.

M. Lévesque, en 1985, est venu voir le gouvernement fédéral et a fait toute une série de propositions; ça, c'est appelé le «beau geste», en 1985. En 1986, M. Bourassa a présenté ses cinq points, il en a fait littéralement la parade; M. Rémillard a fait je ne sais combien de discours sur ça. Tous les chefs politiques, M. Turner en tête, ont réagi aux suggestions de M. Bourassa. Le Parti libéral, lors de sa convention à Montréal, a adopté des résolutions sur les recommandations de M. Bourassa. Le Nouveau Parti démocratique a fait la même chose. Cela a été dans les journaux littéralement pendant deux ans.

Alors, le processus d'information a joué considérablement, mais il y a ce phénomène de base: C'est que les gens ne s'intéressent à ces choses-là que in extremis, à la dernière minute, ou quand ça devient réalité; et alors, les gens se plaignent qu'ils n'aient pas été informés.

Non, il y a eu énormément d'information dans les deux années qui ont précédé l'accord du lac Meech. Alors, M. Mulroney a fait des discours,



M. Turner a fait des discours, M. Broadbent a fait des discours, tout le monde a fait des discours; mais ça ne semble pas avoir mis la population du Canada au défi à ce moment-là. C'est seulement quand ça a été fait que les gens se sont posé la question: «Mais d'où ça vient, tout ça?»

M. Morin: Pour l'avenir?

L'hon. M. Pepin: Moi, je suis un ardent défenseur, un ardent promoteur de l'information politique de la population. A l'Institut de recherches politiques, nous allons publier un petit volume dans quelques jours qui porte justement sur l'éducation politique des Canadiens. Au Canada, autant les partis politiques que les gouvernements, les universités que les écoles secondaires et primaires, et les groupes de pression, etc., n'ont pas suffisamment assumé leur responsabilité dans ce domaine-là.

Et ce qui me frappe le plus, c'est que la population, quand on lui présente ces choses-là, est fortement intéressée. J'ai coprésidé, comme vous le savez, la commission sur l'unité, et nous n'avions pas de problème à attirer la population. Les gens venaient et participaient vraiment à ces discussions-là. J'ai fait, il y a quelques mois, une série d'émissions à TVOntario sur le fonctionnement du gouvernement fédéral; ça a eu pas mal de popularité. J'ai fait, il y a trois semaines à la Canadian Broadcasting Corp. anglaise, une émission, une espèce de visite guidée de la Chambre des communes. Ils n'ont jamais eu autant de téléphones sur un sujet d'actualité politique.

Alors, les gens sont véritablement intéressés, mais il faut qu'on essaie de leur présenter la matière première d'une façon assez intéressante. Encore une fois, je pense qu'il est bien dommage que, sur un problème aussi difficile que celui de l'accord du lac Meech, il n'y ait pas eu une série de trois ou quatre émissions à la télévision anglaise, à la télévision française, à la radio, etc., expliquant ces choses-là à la population.

M. Morin: Je voudrais seulement clarifier, Monsieur Pepin, la question soulevée par mon collègue M. Allen et le Président tout à l'heure au sujet de la position prise par l'Association canadienne-française de l'Ontario. Si j'ai bien compris, ils ont dit, eux, tout simplement que le Québec a la responsabilité de protéger et de promouvoir le caractère distinct. Eux prétendent, si j'ai bien compris, non seulement que ça devrait être la responsabilité du Québec mais que ça devrait être aussi la responsabilité des autres provinces et du pays en entier que de le promouvoir et de le protéger.

L'hon. M. Pepin: Quoi?

M. Morin: Le caractère d'expression française. Autrement dit...

L'hon. M. Pepin: La dualité.

M. Morin: La dualité? Pas tout à fait, non. Ce n'est pas la dualité. Ce qu'on dit bien, c'est la promotion de la société distincte. Alors, eux disent tout simplement: Si le Québec protège les intérêts des minorités en protégeant et en promouvant, alors la même responsabilité devrait être donnée aussi à l'Ontario, la même responsabilité devrait exister aussi dans les autres provinces. C'est bien ça. C'est ce qu'ils ont présenté. C'est là qu'ils se choquent. Comment répondez-vous à ça?

L'hon. M. Pepin: J'ai déjà répondu.

M. Morin: Pas tout à fait.

L'hon. M. Pepin: Si. J'ai dit que j'étais tout à fait, 102 pour cent d'accord pour que le fédéral et les gouvernements des provinces protègent et fassent la promotion de la dualité canadienne, je suis tout à fait d'accord avec ça. Je pense qu'il est normal que les provinces du Canada n'aient pas à faire la protection et la promotion du caractère distinct du Québec.

M. Morin: Non, d'accord.

L'hon. M. Pepin: Alors, il est normal de laisser ça au Québec.

M. Morin: Oui.

L'hon. M. Pepin: Mais j'ai ajouté tantôt que je considérais normal que le gouvernement fédéral fasse la protection et la promotion du caractère distinct du Québec. Si un principe est suffisamment important pour être inclus dans la constitution, il est suffisamment important pour que le fédéral s'en mêle aussi. Alors, je trouve absolument incongru et inacceptable que seuls le Parlement et le gouvernement du Québec aient la responsabilité du caractère distinct du Québec.

M. Morin: Là vous avez ajouté les provinces. Tout à l'heure vous avez dit seulement le Canada.

L'hon. M. Pepin: Ah non, je ne voulais pas dire cela. Je n'ai pas changé de position. Vous allez la retrouver, cette position-là, dans mon discours de Québec.

M. Morin: D'accord. Seulement une autre question, Monsieur le Président. Je m'excuse.

En anglais on dit «to preserve», en français on dit «protéger». «Preserve», à mon point de vue, veut dire tout simplement: «mettre quelque chose en boîte, le fermer, puis on le garde». «Protéger», à mon point de vue, ça veut dire: «Moi, je te protège, Noble. Tu as toute l'action que tu veux. Tu peux faire tout ce que tu veux. Si tu as des difficultés, je vais te protéger.» C'est ça que ça veut dire, «protéger». «Preserve», ça veut dire: «Bien, d'accord. Tu gardes ce qu'il y a là, mais tu n'en aura pas plus». Je ne crois pas que ce soit ça dont on parle...

L'hon. M. Pepin: On parle là des choses les plus difficiles qui soient possibles au monde, ce sont les mots; il n'y a rien de plus difficile que les mots. Je peux faire une analyse littéraire pour montrer que «protéger» inclut «promouvoir», puisqu'on ne peut pas véritablement protéger une chose qu'on ne promeut pas, dans le sens que si une chose n'avance pas, elle recule. Notez, je peux faire toutes ces analyses-là et on n'en finira littéralement plus. On a expliqué tantôt le pourquoi de cette variation des mots dans l'accord du lac Meech. Tout ce qu'on peut dire, c'est qu'il est regrettable qu'ils n'aient pas suivi votre conseil, Monsieur Morin, que je fais mien.

M. Morin: Merci, Monsieur Pepin.

M. le Président: Alors, Monsieur Pepin, au nom du comité...

L'hon. M. Pepin: Pouvez-vous me permettre de dire une autre chose en finissant?

M. le Président: Oui, absolument.



L'hon. M. Pepin: Il y a un point sur lequel je veux dire trois ou quatre mots puisqu'il ne ressort pas suffisamment et la preuve en est que personne ne m'en a parlé. Il y a bien des gens qui disent que le Québec sort triomphant de l'accord du lac Meech, et il y a du vrai là-dedans. M. Bourassa a fait cinq demandes et a obtenu gain de cause et même plus, de dire certains, sur les cinq demandes qu'il a faites. Il n'y a personne, du moins à ma connaissance, qui a souligné les concessions que M. Bourassa avait faites lors de l'accord du lac Meech. Alors, j'ai deux pages là-dessus et je vais vous les lire dans une minute. Je voulais simplement que les gens sachent que M. Bourassa a été conciliant.

La première chose qu'il a concédée, c'est la primauté de la Charte canadienne des droits sur la Charte québécoise, et c'est la législation québécoise. Lévesque n'avait pas accepté ça. Il y a bien des gens qui n'acceptent pas ça facilement puisque, ce faisant, le gouvernement du Québec accepte que la Charte des droits s'impose dans certains cas, même en matière provinciale. Cela, évidemment, c'est important et c'est comme ça que la Charte du Canada influe, disons par exemple, sur l'affichage et sur l'enseignement dans les écoles du Québec. C'est nettement l'acceptation par le Québec d'une juridiction sur ses propres affaires. C'est assez important pour que ça vaille la peine d'être souligné. Il accepte en même temps la clause Canada, que vous connaissez; il accepte en même temps un tas de choses qui relèvent de la Charte.

Deuxièmement, M. Bourassa a renoncé à un veto spécial pour le Québec qu'il réclamait d'abord. Vous savez qu'au début M. Bourassa réclamait un veto spécial pour le Québec. Vous savez que M. Trudeau, à Victoria, avait offert un veto Québec à M. Bourassa. Finalement, M. Bourassa a renoncé à ça pour se contenter d'un veto comme celui de toutes les autres provinces. C'est vraiment assez important pour que ça vaille la peine d'être souligné.

M. Bourassa, troisièmement, juste pour en faire une nomenclature complète, n'a obtenu aucun changement aux droits en matière d'immigration. L'article sur l'immigration demeure essentiellement ce qu'il était depuis l'accord Cullen-Couture de 1978, essentiellement la même chose; il n'y a pas de changement véritable. Si vous me dites qu'il y a un changement, je vais me battre contre vous pour souligner qu'il y a une affirmation extraordinairement sérieuse et dure de la prépondérance du gouvernement fédéral en matière d'immigration dans le paragraphe 92B.(2).

Quatrièmement, il n'y a pas de véritable limitation du pouvoir de dépenser dans l'accord du lac Meech; véritablement, il n'y en a pas. Et si vous voulez vous battre contre moi sur ça, je vais même insister pour dire qu'il y a un renforcement du pouvoir fédéral de dépenser en matière provinciale. En d'autres termes, il y avait eu un débat sur ces choses-là, devant les cours de justice en particulier, et l'accord du lac Meech, à ce point de vue-là, dit: «Voilà, il pourra intervenir, mais il y aura un droit de retrait, etc.». Certains peuvent penser qu'il y a même un renforcement du pouvoir du gouvernement fédéral en cette matière-là.

Cinquièmement, le droit de présenter des listes de noms pour la nomination des juges et des sénateurs n'est pas véritablement le commencement de la balkanisation du Canada. Ceux qui ont dit ça charriaient, exagéraient singulièrement. Si vous êtes ministre provincial de la Justice ou si vous êtes premier ministre, je vais insister auprès de vous jusqu'au jour où j'aurai reçu de vous des listes où il y aura au moins un nom de personne acceptable. C'est moi qui vais commander la situation, ce n'est pas vous. Voyons! Il faut être adulte quand même. Cela, c'est le cinquième changement, la cinquième chose que M. Bourassa a acceptée.



Finalement, il a accepté également des limitations formelles aux effets possibles du caractère distinct de la société québécoise. Il y a dans l'accord du lac Meech toute une série d'acceptations de limitations formelles.

Alors, M. Bourassa sort grandi de l'accord du lac Meech, mais je vous suggère le plus simplement mais le plus fortement que je peux qu'il a fait, lui aussi, des concessions intéressantes et importantes, et tout ça souligne la nécessité d'obtenir cet accord-là, qui est de ne pas tout remettre en discussion.

Je veux finir très positivement. Il est très rare qu'au Canada nous ayons eu l'intelligence de nous préoccuper de questions constitutionnelles avant qu'il y ait une crise. Alors, pour une fois qu'on s'est intéressé à obtenir des changements de la constitution sans qu'il y ait de crise, ne provoquons pas une crise pour pouvoir s'occuper de la constitution.

M. le Président: Merci beaucoup. On ne va certainement pas se battre contre vous sur ces cinq ou six points, surtout en fin d'après-midi. Nous aimerions vous remercier infiniment d'être venu cet après-midi et d'avoir partagé avec nous non seulement vos notes de classe mais surtout vos idées, vos impressions de l'accord. Nous vous remercions et nous allons certainement étudier ces idées durant la rédaction de notre rapport.

Just before adjourning, the clerk has a couple of administrative notes. Perhaps we can go in camera and go through those.

The committee continued in camera at 5:36 p.m.

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SELECT COMMITTEE ON CONSTITUTIONAL REFORM

1987 CONSTITUTIONAL ACCORD

THURSDAY, MARCH 24, 1988

Morning Sitting

Draft Transcript



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From the Inuit Committee on National Issues:

Amagoalik, John, Co-Chairman

Individual Presentation:

Pickersgill, Hon. John W.

From the Freedom of Choice Movement:

Forse, Dr. R. Armour, President

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Weiler, Richard, Policy Associate

LEGISLATIVE ASSEMBLY OF ONTARIO  
SELECT COMMITTEE ON CONSTITUTIONAL REFORM

Thursday, March 24, 1988

The committee met at 9:28 a.m. in the Capital Hall of the Ottawa Congress Centre.

1987 CONSTITUTIONAL ACCORD  
(continued)

Mr. Chairman: Good morning, ladies and gentlemen. If we can begin today's session, I would like to welcome our first witness, John Amagoalik, and with him is Michael McGoldrick. As I set out, Mr. Amagoalik, if you would like to proceed and make your presentation, we will then follow that up with a period of questions. Welcome to the hearings this morning.

INUIT COMMITTEE ON NATIONAL ISSUES

Mr. Amagoalik: Thank you. My name is John Amagoalik. I am the co-chairman of the Inuit Committee on National Issues, which is the constitutional arm of our national organization. I am appearing before this committee because I just happened to be in town on other business. I do appreciate the committee taking time to hear from us.

The Inuit Committee on National Issues represents the Inuit of Labrador, northern Quebec and the Northwest Territories on constitutional issues. I pointed out that I just happened to be in town. The government of Canada has cut off our funding as of Canada Day this summer, so we do not have any resources to prepare for hearings and to lobby different premiers across the country.

I want to demonstrate to this committee just how deeply felt some of our feelings are on the Meech Lake accord and the whole constitutional process in general. To demonstrate that depth of feeling, I want to quote Zebedee Nungak, who is the co-chairman of this committee, in a speech he made at the Canadian art resources conference after the 1987 first ministers' conference and also the Meech Lake accord.

He said: "I would like to start by giving my impression of the premiers and the Prime Minister congratulating themselves after the marathon negotiations on the Meech Lake accord, followed by the Prime Minister going on national television and, with all due emotion, saying that Canada is whole again. We have a saying in Inuktitut which describes my impression of those honourable gentlemen. Roughly translated, it means 'great shameless liars,' great shameless liars for proclaiming that Canada is one again when they know it is not, because the aboriginal peoples are still excluded from the comfortable little deal they have made at Meech Lake."

He also said, when asked what is going to happen next or what could happen next, "The Prime Minister's assurances that he will call another conference when he deems it appropriate is, to us, an empty gesture."

It has become quite clear to us that the federal government has written off the aboriginal constitutional process in an effort to win the support of some western provinces for the Meech Lake accord. If any one doubts this,

consider that the federal government tells us to seek a consensus among all parties for an amendment and then promptly cuts off all our funding.

It also explains why a meeting between the three federal ministers responsible for the aboriginal constitutional process and the four aboriginal leaders, which was scheduled to take place last December, was postponed to early January, then to late January and then until February. After all this, the meeting was promised for absolutely no later than mid-March. As unbelievable as it may sound, the meeting has yet to take place and probably never will, under the current ministers.

The federal government has done a very good job of gutting the aboriginal constitutional process. It has done such a good job that ICNI has no travel money, no staff, no offices, no phones, no organization to speak of. Our political mandate continues and this is why I am here today. However, I hope you will understand our situation. Limited resources means that my presentation is not up to standard and that I am not as prepared as I would like to be.

I should also acknowledge that Ontario has always been one of the more supportive provinces in terms of our efforts at the constitutional table. I said that ICNI enjoyed a good relationship with Ontario and this continued throughout the Meech Lake process. Attorney General Ian Scott was in personal telephone contact with our office even while the first ministers were meeting in the Langevin Block, but despite his good efforts our worst fears came to pass.

In a letter to ICNI last June, Premier David Peterson stated that the Meech Lake accord actually advances the cause of aboriginal rights within the context of constitutional reform. On this point he is wrong. The Meech Lake accord clearly sets out an ongoing process for constitutional reform in Canada. It clearly sets out an agenda which includes senate reform, fisheries and other matters to be agreed upon. It is equally clear that aboriginal issues will not be one of the matters to be agreed upon at a later date.

I would like to remind the select committee that Premier Don Getty went out of his way to state on the public record that if the 1987 first ministers' conference on aboriginal matters had succeeded in entrenching self-government rights, he would have given serious consideration to pulling Alberta out of Confederation.

ICNI sent a short telex to Mr. Peterson and a few other sympathetic Premiers on the eve of the Langevin Block meeting that asked why the Meech Lake accord conspicuously ignores aboriginal matters as an outstanding constitutional issue. The telex made it clear that such an omission, coming after the failure of the 1987 March first ministers' conference, would spell the end of the aboriginal constitutional process. We also specifically warned the Premiers that the wording of the Meech Lake accord indicates that matters not identified in the constitutional reform agenda would not be constitutional issues until first ministers later decide that they are.

We met with McKnight, Hnatyshyn and Senator Murray last summer. At that time, we made proposals on the ongoing process of aboriginal constitutional matters. They told us that they would respond to our proposal by the end of summer. We never heard from them. A meeting was arranged between ourselves and Senator Murray in, I believe, September or October. More reasons were found to cancel that meeting. Further efforts were made to have a multilateral sort of meeting with the three ministers and the four aboriginal leaders in December.



The government of Canada, with some help from the bureaucracy, has very conveniently found reasons for the meeting not to take place.

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We are now convinced that the government of Canada does not want the aboriginal issue to be on the national agenda down the stretch towards the national election. That is very clear to us now and we have to turn to provinces like Ontario, which has been very understanding right from the beginning, to make sure that the aboriginal issue does not get lost, because it is unfinished business and will continue to be a sore point in aboriginal and government relations until it is resolved. That is all I have to say at this time. I would be happy to try to answer some questions.

Mr. Chairman: Thank you very much for your presentation. I add that we are grateful you were able to come this morning. I know we were scurrying back and forth, but we really appreciate the fact that you were here and could join us this morning. We will begin our questioning with Mr. McGuinty, and then Mr. Breagh.

Mr. McGuinty: A number of people have made the point that one of the reasons for the accord is to placate Quebec, if you will, or to satisfy the legitimate aspirations of Quebec. I think yours is the first statement I have heard to the effect that the western provinces have a kind of vested interest in the accord. I had never heard before that Premier Getty made that kind of extreme statement about separatism on the basis of the possibility of not ratifying the accord. Could you elaborate for me what the motive is of the western provinces, notably Alberta, for being so opposed to the aboriginal rights implications of the accord?

Mr. Amagoalik: I cannot explain how Donald Getty thinks, but as I see it, the western provinces, Alberta and British Columbia in particular, have very large aboriginal populations. Some of those bands in the west do not have treaties and for this reason Alberta and British Columbia tend to be very--how shall I put it?--nervous about dealing with their aboriginal peoples. What may be a relatively small issue in a province such as Nova Scotia can be a very big issue in British Columbia because of the different status the Indian people have.

As far as my reference to Getty goes, I believe it was the Toronto Star that quoted him as saying those things.

Mr. McGuinty: What aspirations of the aboriginal people in Alberta could be construed as detracting from the wellbeing of the province of Alberta?

Mr. Amagoalik: I cannot really speak on behalf of the Indian people of Alberta. As I said earlier, I represent the Inuit of the Northwest Territories, northern Quebec and Labrador. Aboriginal politics in the west is much more controversial than it is in other parts of Canada, so I guess that is why the premiers from that region tend to be a bit more nervous.

Mr. Breagh: I would like to pursue basically just a couple of things. One of the observations many have made is that we are more than a little disappointed with the follow-up; if Meech Lake did not do all that many of us wanted it to do, we would have at least anticipated that the federal government, as perhaps the government agency in Canada with the lead

responsibility, if you want to put it that way, should have been very active in pursuing how we bring the aboriginal groups in.

If we failed to do that during the Meech Lake agreement, it seemed obvious that this ought to be the next step. I heard the Prime Minister talk about the next round. Many of us had anticipated that we were, just prior to Meech Lake, at a point where some settlement, or at least some agreement on a process for settlement, in fact was near. That conference was a major disappointment to many of us.

I am more than disappointed to hear that things like meetings with ministers have not happened and that funding has not been extended. I would like to kind of pursue that a bit. You seem to leave us with the impression this morning that they are basically drying up the funding and not participating in any kind of meaningful meeting process at all, hoping you will go away until after the next election. I cannot conceive of that happening, but how serious is the funding problem?

Mr. Amagoalik: To the Inuit, funding is a big problem. It is a problem to us in particular because we are a much smaller organization. The Assembly of First Nations which represents the status Indians of Canada, the Native Council of Canada which represents nonstatus and Metis, and also the Métis National Council are, compared to us, relatively large, have larger budgets and can absorb this loss, but we cannot. When we lost our constitutional funding, we could not absorb the loss and continue operating using other funds. We just could not do that, so the funding problem is a very serious one to us.

Another thing I want to make very clear to the committee is that the Inuit are not opposing Quebec's participation in the constitutional life of this country, but at the same time we do not want that to be done at our expense. If the Premier of Quebec wants to prove that what he has been saying in public--everybody keeps telling us that once Quebec is in, things will be much easier, that it will be easier to deal with the aboriginal issue. They keep telling us that, but they should prove it by doing something.

There are a number of ways the situation could be dealt with. First of all, the Meech Lake accord could be amended to include the aboriginal issue as one of the agenda items. If that is too risky, as a lot of people are suggesting, the government of Canada can show some leadership by introducing another resolution re-establishing the process, with a first ministers' conference at the end of that process.

Another suggestion is that the Senate of Canada might introduce what they call a companion resolution or a stand-alone resolution dealing with aboriginal constitutional issues. That could be done, but as I indicated earlier there does not seem to be any desire, or the will, on behalf of the government of Canada to do this. As far as we are concerned, we are filed away and they are not going to pull us out until after the next election.

Mr. Breagh: One of the things I want to talk to you about a little bit is that the native council has put before us three what it refers to as companion resolutions, which many of us find very attractive mechanisms for bringing the aboriginal people back on the agenda without threatening the Meech Lake accord itself. I take it that you have seen those and that you are generally in agreement with both the technique and the companion resolutions they have put forward.

Mr. Amagoalik: We have not dismissed that approach. We are willing to consider any and all efforts to re-establish the process and get us back to the table. The companion resolution route is an interesting one and something that merits further study.

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Mr. Breaugh: Without going on at any great length, there are many of us who really feel very strongly that it is the great shame of the nation that these original debts have never been met. We seem to have constantly abandoned aboriginal people. Every time we get close to an agreement, there always seems to be a good reason to back away from it. I think a number of people on this committee are searching for some mechanism that will get that agenda back in place. I do not think anybody who is even a casual observer would think there is a simple answer to this or that it is going to come quickly, but if there is not a determination to work at it consistently over a substantial period of time, we will not meet those obligations.

I am disturbed about the funding aspect because it strikes me that you are right, that there are some native groups who are in the happy economic position that they can exercise some measure of independence. Many of them are just geographically close to places where meetings like this will occur. Asking them to come to a meeting in Ottawa from a reserve near Montreal or Cornwall is not a big deal. Asking somebody to come to Ottawa from the far reaches of the Northwest Territories is a big deal, and the fact that there is no plane ticket available simply deprives that group of people from any kind of representation.

I thank you for coming in this morning. I would like to leave you with the notion that I am attracted to this concept of companion resolutions. It seems, to some of us at least, that without dumping all over the Meech Lake accord, which is very difficult to do, that seems to solve many people's problems, a stand-alone set of resolutions that deals with a problem we think is important and must be dealt with. It does not jeopardize the Meech Lake accord, so that proposal by the native council is gathering some support in the committee. I ask you to spend a little time looking at that to see whether there is potential there to resolve some of your problems.

Mr. Amagoalik: It is true that the aboriginal issue could be dealt with in that way, but at the same time it is also important to remember that the aboriginal element is not the only problem. The relegation of the NWT, the Yukon and the people living in them to the hinterlands of national politics is a serious problem. In effect, we have been relegated to different classes of citizens of this country, so that issue has to be dealt with as well.

Mr. Breaugh: Finally, I tend to agree with your assessment of the current federal government. I think many of us are going to have to simply say: "To hell with you. If you do not want to pick up your obligations, there are others in the nation who do." Although it is not going to happen as quickly as we would like, and maybe not even in the way we would like, a way must be found to deal with it. I think there is considerable determination. No matter what the current federal government or any of the individual premiers might think about the matter, there are others in the country who are not prepared to let it drop.

Mr. Allen: I would like, first off, to put the question as to whether the problem that you have is with the Meech Lake accord itself in terms of what is in it or whether the major problem is what is not in it. You



have mostly stressed what is not in it to this point. Is there anything in the Meech Lake accord per se, in the clauses there, that creates a problem for you?

Mr. Amagoalik: You are quite correct that as far as the aboriginal issue is concerned, the problem is that there is something missing from the Meech Lake accord. We are not on the agenda. But there is also a problem in the accord, something in the accord that requires unanimity for the creation of new provinces. That is something we would prefer not be in it. So it is a problem both ways.

Mr. Allen: In that respect, is it your preference to return to the original entry-of-new-provinces arrangement under the British North America Act of 1867, whereby it was a matter between the federal government and the territory in question?

Mr. Amagoalik: Yes. I think the people of the territory should have the same right as all other Canadians have. I do not see any reason that creation of new provinces should be treated differently than it was in the past 100 years, unless perhaps there is a hidden agenda among some of the provinces. We all know that Quebec, perhaps Ontario and maybe Manitoba, are always interested in Hudson Bay, perhaps extending their borders. Alberta is certainly looking at the Mackenzie Valley and that sort of thing. Perhaps there is a hidden agenda. Perhaps that is why that part of the accord was written in that particular way. I do not know.

Mr. Allen: One sometimes gets the impression that the politics of these matters is like the dance of the seven veils. You remove one and there is still another veil to go, then another and still another.

Mr. Chairman: This is a family committee.

Mr. Allen: I am sorry about that, Mr. Chairman. I will try to restrain my remarks and not pursue that analogy to its ultimate conclusion.

Mr. Harris: All of us understand, though.

Mr. Allen: You understand? All right, as long as the main point has been made.

Not being politically desirous of creating excuses for any level of government, least of all the federal government at the moment, but you have suggested that there may be hidden agendas hidden behind hidden agendas. One can certainly, from the perspective you have put it, see what may be the scenario with the federal government cutting funding, not really being willing to go ahead with meetings and so on. If, at the moment, the principal political objective is to secure Meech Lake, and one of the oppositions to moving ahead on the aboriginal front lies in some of the parties the federal government is trying to bring around, one could imagine that part of the game for the time being is not to be seen to be doing business on that front, even though there may be, in many quarters, a desire to do that, to pick it up very actively in the aftermath of what is accomplished at Meech Lake.

Do you see any signs on that side of the interpretation of those events that gives you any hope? Are there any indications at all that there is that hidden agenda behind the hidden agenda that might be at work and would come into play once Meech, in fact, was accomplished?

Mr. Amagoalik: At the moment, I do not see anything that encourages

me or convinces me that something is going to be done soon. As I stated earlier, people tell us that once Quebec is in, they will help this process along. I do not happen to have much faith in the provincial government in Quebec and the Premier to deal with this in the way we would like to see it. We have been requesting a meeting with the Premier for--I do not know--ever since he came into office. He never even acknowledges our letters. McKnight at least acknowledges that he received my letter, but Bourassa will not even acknowledge. So I do not have much faith in the current situation in Quebec to really help us along.

Miss Roberts: If I might just pick up on what Mr. Allen has been dealing with. Can you indicate to me what stage your negotiations are at with the federal government right now? Do you expect it will take 10 more meetings? Exactly where are you in your negotiations, other than that they have not talked to you for a year?

Mr. Amagoalik: There is absolutely nothing happening. There are no negotiations, so we are nowhere.

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Miss Roberts: I believe you indicated you had a meeting in July or August. Just where were you in that? Was it just sort of a get-acquainted meeting of some type?

Mr. Amagoalik: No. We did not need to get acquainted. We knew those gentlemen quite well by the time we met with them. We were trying to get some sort of indication from the government of Canada as to where it stood on this issue, what it was willing to do and what was necessary to get that process back on track. They said they would respond to us but they have not. There are no negotiations. The situation is nowhere.

Miss Roberts: What you are saying is that the negotiations are in their park. You have asked them to respond to you. Is that correct?

Mr. Amagoalik: Yes. We have, but we do not expect any response in the foreseeable future.

Miss Roberts: You have indicated that funding from the federal side has been cut off. Do you have any other source of funding, either through the Northwest Territories, northern Quebec or Labrador?

Mr. Amagoalik: No, none at all.

Miss Roberts: Then your funding is just strictly through your people?

Mr. Amagoalik: The Secretary of State and some from Indian Affairs.

Mr. Chairman: Your association represents the Inuit in the territories, northern Quebec and Labrador, and you have tried to be in direct contact with not only the federal government but also Quebec and presumably Newfoundland. In terms of those three areas, what about the relationship with Newfoundland? Do you deal with them as well or do both provinces in a sense say, "Look, you are supposed to deal with the federal government, not with us"? Do you try to have ongoing discussions with Newfoundland as well as you have tried with Quebec?

Mr. Amagoalik: We at the national level do not have that much

contact with the provincial governments but we do have regional organizations. We have regional organizations in Quebec and Labrador that are in more direct contact with their provincial government than we are. I suppose there are some ongoing negotiations. Long-time negotiations in Newfoundland and Labrador have been tentatively started in that province, although the issue of self-government is not really on the table. There are ongoing efforts by our people in Quebec to try to deal with Quebec, but they are not having much success.

Mr. Chairman: So that really your route, in the main, has to be through the federal government, and without the agreement on funding you are simply not going to be in a position to really engage in much research discussion on any of these issues, at least not easily?

Mr. Amagoalik: That is very true. I wish we could afford to go to see Frank McKenna in New Brunswick so we can talk to him about our concerns, but we cannot. We do not have the resources. We have always said that the government of Canada has this trust relationship with the aboriginal peoples and it has to provide the leadership. The leadership simply is not there.

Mr. Chairman: On behalf of the committee, I want to thank you both for joining us this morning. I think you have underlined a number of concerns that other aboriginal groups have presented to us and I think there is certainly a clear picture in terms of a number of those concerns. In addition, you may be aware that we did meet with government leaders from the Northwest Territories, as well as from the Yukon, so that other aspect that you have referred to has certainly been made very clear to us as well, I suppose, with respect to what is not in the accord and what is.

We do thank you for coming and joining with us this morning and for responding to our questions. Thank you very much.

Mr. Amagoalik: Thank you very much. I am sure you will be hearing from us again.

Mr. Chairman: If I might, I will now call upon our next witness, the Honourable J. W. Pickersgill, if he would be good enough to come forward. I know we are making some photocopies of your statement. If that was the only copy that was taken upstairs, we will pause for a few minutes before it comes down, but if not, sir, if you have a copy, we can begin and we will catch up. Oh, here we are.

Hon. Mr. Pickersgill: I think perhaps I should remove some misunderstanding. I have no copy of a statement. I have a kind of table of contents to keep me on the rails. I hope it will.

Mr. Chairman: That is fine. We want to thank you very much for coming here this morning. If you would like to begin your comments then we will jump in after with questions, if that is all right.

Hon. Mr. Pickersgill: That will be fine.

Mr. Chairman: Please go ahead.

HON. J. W. PICKERSGILL

Hon. Mr. Pickersgill: I should like to say, first of all, that my presumption in coming here is really based upon the fact that, probably with



the exception of Paul Martin, there is nobody in this country who has had as long experience as I have of the constitutional process. My first introduction to it was 50 years ago when I first went into Mackenzie King's office. One of my first tasks there was to follow the proceedings of the Royal Commission on Dominion-Provincial Relations, headed first by Chief Justice Rowell and later by Dr. Sirois.

The first task of any importance I was given was to draft answers to letters from the premiers when Mr. King had asked them in November 1937 to agree to an amendment to the Constitution to permit federal unemployment insurance. That process started in November 1937 and it was not completed until 1941.

It was the first time ever that there had been agreement by all the premiers and the Prime Minister on an amendment to the Constitution which would change the distribution of powers between the federal and provincial governments. It was the only one that took powers away from the provincial legislatures completely and gave them to the Parliament of Canada. There has been no occasion when that has been done since.

The only occasion on which the powers of the provincial legislatures have been diminished without the consent of the legislatures was when the Constitution was repatriated in 1981-82. At that time, the powers of the Legislature of Quebec were diminished without the consent of the provincial authorities. In other words, something that belonged historically, since Confederation, to that provincial Legislature was taken away from it without its consent. That created a grievance which is now, through the Meech Lake-Langevin accord, possible to remove.

#### 1010

I say possible to remove because Meech Lake-Langevin has not yet been accepted, but it has been accepted and confirmed by the Legislature of Quebec, so we know that if the rest of the authorities in the country accept this accord, that grievance will have disappeared and instead of submitting to the judgements of the Supreme Court as, to the great credit of both Mr. Lévesque and Mr. Bourassa, the authorities in Quebec have, they will be willingly accepting them.

It seems to me that is really the crux of this whole problem and the purpose was exclusively to deal with that. I think a lot of people misunderstand, particularly a lot of people who would like to see other changes made in the Constitution. They do not seem to realize that the Constitution is not a Legislature, that if people have grievances, if they do not like the Constitution, the proper way to try to redress those grievances is through the legislatures or through Parliament.

The Constitution is not a Legislature, it is simply a kind of skeletal structure of our federal form of government. It is certainly not a Christmas tree on which every discontented person should expect to get a present. It seems to me some of the objections that have been made convey this idea. There are one or two objections that have been put forward which suggest that there are impediments in the Meech Lake accord--I will say Meech Lake for brevity--that Meech Lake would prevent.

If anyone has any questions when I am finished on those points, I would be very happy to give you my views on them.

You may say Mr. Stanfield and Senator Murray both thought it was a mistake to repatriate the Constitution without the consent of all the provincial governments. Mr. Stanfield said what was done in 1982 was a mess and Senator Murray voted against it. I, of course, had no position at all--I was just a retired old man viewing the thing from the sidelines--but I asked myself, "Would I have approved patriation?" My answer is that I would have done it very reluctantly, because I thought that doing it without the consent of the elected representatives and in the face of the unanimous opposition of almost a third of the Canadian population was not a very good method.

Why then would I have supported patriation? Because I thought we had reached the point where we could no longer have to depend upon the British Parliament to do it for us. There were beginning to be signs that the British Parliament might not do it willingly and might try to interfere with it, and I thought it was so important that I would have supported it, even though I thought it was very imperfect in the way it was done.

It seems to me that the big compelling objection to it is now within our capacity as Canadians to remove. After all, I was born in Ontario 82 odd years ago and I have lived more than half my life in Ontario but I have never really been an Ontarian. I went to Manitoba in 1907, before any of you were born, and I represented a constituency in Newfoundland, so perhaps I might claim, in my usual modest way, to be a Canadian.

The government of Quebec, as I have already said, has submitted to the enlarged jurisdiction of the Supreme Court of Canada. It has not contested in any way, or even protested in any way, the decisions of the court which affect people in Quebec, which shows a very profound respect, in my opinion, for the rule of law, and we should not forget that. On the other hand, we should not forget that Quebec has refused to participate in any conference on further constitutional changes until the Constitution is amended in a way acceptable to its government and Legislature, so anyone anywhere in this country who wants other changes in the Constitution is never going to get them as long as Quebec continues its boycott. That is the stark fact.

It was done once by Mr. Trudeau's government, but no Prime Minister again is ever going to agree to an amendment of substance affecting Quebec unless the Quebec authorities accept it. That means that the way of any further constitutional change affecting the whole country is blocked until this Quebec grievance is removed. We have a way to remove it now in Meech Lake, and it is a way that the Quebec government took the initiative in. The government of Quebec, under the present Premier, made its proposals, the proposals that would make the Constitution acceptable to it, at an interprovincial conference at Edmonton. The other nine premiers agreed to discuss these demands as a priority at a first ministers' meeting.

The present Prime Minister, for whom I have never expressed total support or admiration, did have the wit and the good judgement on this occasion to seize this opening and invited the first ministers to Meech Lake for the sole purpose--and I really think it needs to be emphasized that this was not a conference on every aspect of the Constitution--of seeking to amend the Constitution of 1982 to make it acceptable to the government and Legislature of Quebec. That was done at Meech Lake and in the Langevin follow-up.

Moreover, that accord was accepted unanimously by all the 11 governments that share the sovereignty of Canada. When people talk about its being done secretly or in a corner, who is better qualified to speak for the people of

Canada than the heads of the governments responsible to the elected representatives of the people? All the other people who are making objections were never elected. They are either making them on their own account, as I am, or making them on behalf of a special group.

We should try to remember that in the parliamentary system of government we have, the elected representatives of the people--perhaps I do not need to say this to you--are those elected to represent all the people, not any special interest. Maybe they do not always do it well, but that is what their purpose is and they certainly have more right to do it than anybody else, and more title to do it.

## 1020

I do not need to tell you, because you have been listening to a lot of people, that notwithstanding the fact that the Meech Lake meeting was called for the sole purpose of dealing with the Quebec grievance and achieved this goal unanimously, various proposals for changes have been made by unelected persons or groups.

The accord, if approved, will provide for annual meetings of first ministers to consider future constitutional changes. Approval of Meech Lake will not set the Constitution in concrete. Failure to approve it will prevent any other change, as long as the government of Quebec continues its boycott.

I think that is a realistic statement of the situation. We know that the House of Commons has already approved the accord, with the support, not only of the government but also of the leaders of the Liberal and New Democratic parties and the great majority of their supporters in Parliament.

I now come to deal with a few of the objections. The provision of the accord which seems to have aroused considerable misgiving and opposition is the formal recognition of Quebec as a distinct society, although the Premier of Ontario, in his realistic fashion, said that every grade 4 student in Ontario knew it was. I must say that I think even some of the ancients know it is.

My own view is that every province is a distinct society and that is why Canada is a federation and not a unitary state, although Quebec perhaps is more conspicuously distinct than any of the others except possibly Newfoundland. Quebec was recognized as a distinct society by George III when he gave royal assent to the Quebec Act in 1774, so this is not any last minute, secret deal. It was done openly by George III in 1774.

I will just say briefly how the Quebec Act made Quebec distinct. It recognized the right of Quebecers to communicate with their government in the French language. It recognized the right of Catholics to hold public office more than half a century before Catholic emancipation in Britain and Ireland. No Catholic could hold public office in Ireland but he could in the province of Quebec. The act maintained the civil law of France. It did not provide for an elected assembly, although an assembly existed in all the other American colonies, thus making it very distinct from the other American colonies.

The recognition by Quebec in the Quebec Act of its distinct character was one of the causes of the American Revolution. A lot of the American dissidents, as they were then--they had not actually started the revolution, although they did the next year--thought that, since the British Parliament had not given Quebec an assembly, the next step would be to take it away from



them. That created one of the additional grievances of the Americans that led to the revolution.

Shortly after, the United Empire Loyalists migrated to the western part of the province of Quebec. When my ancestors crossed the Niagara River, they crossed into the province of Quebec. I used to say that often on the public platform and people would think, "This poor fellow doesn't know any history." But it was true, of course, until 1791. In 1791 the Loyalists and the other residents of the western half of the province of Quebec insisted on having a separate society.

The result was that the British Parliament passed a constitutional act, divided Quebec into two provinces, Lower Canada and Upper Canada, and in Lower Canada confirmed all the distinctive characteristics that had been given to the province of Quebec by the Quebec Act and, in addition, gave that province an assembly in which the French language could be used and to which Catholics could be elected.

That was really the most clear evidence that Quebec was a distinct society. But it did not remain unchallenged. After the rebellions of 1837 and 1838, the British Parliament in the Act of Union of 1841 united the two provinces into the single province of Canada. The act provided that English only should be the language of the Canadian Parliament and alone have official status.

That situation did not last very long. In my opinion, it is one of the great glories of Canadian history that the Parliament of the province of Canada, in which a majority of members were English speaking, insisted on the restoration of French as an official language. I do not think we should ever forget that act of statesmanship.

The "nationalists" of Quebec--and I use the word "nationalist" with quotation marks--think Quebec is a nation. I do not. The "nationalists" of Quebec have never forgotten 1841 and they say, "Well, if it was done once, it could be done again." But it was never tried until the repatriation of the Constitution in 1981-82 which took away powers that had always belonged to the Legislature of Quebec. It took them away from it. It did not give them to the Parliament of Canada in the Charter of Rights; it just limited the power of that Legislature without the consent of any of its members.

#### 1030

The section of the accord on the distinct society enjoins the government of Quebec to preserve and promote the distinct character of Quebec society, and that has worried a lot of people. I would just like to remind you that under the British North America Act, which is in this respect still part of the Constitution, part of the distinct character of Quebec is that there is constitutional guarantee for the rights of the English-speaking minority, and in no province except New Brunswick is there any constitutional recognition of the rights of the French minority. The English minority in Quebec has greater protection than the French-speaking minority in any other province, with the dubious exception of Manitoba since the Supreme Court decision.

A lot of point has been made of the fact that the Legislature and government of Quebec are encouraged to promote their distinctive character, and all the federal government and the other provinces are enjoined to do is to preserve, not to promote. I think the reason it does not say "promote" is that you would not have got the premiers of several provinces to agree to

promote the interests of the French Canadian minorities. Therefore, they agreed to preserve what they had, but I think two or three of the premiers would not have agreed to Meech Lake if they had been asked to say they would promote those interests. I think Mr. Peterson probably would have, because he is doing it anyway, but there are several provinces where there is even reluctance to preserve what rights there are, as some of you know.

I have said before that the submission by the Quebec authorities is not good enough, in my opinion. What Canada needs is willing acceptance of the Constitution by Quebec, and the present government and Legislature of Quebec have offered that acceptance on very reasonable terms. It is true that one or two sections were included in Meech Lake to secure the acceptance by other premiers of the modest proposals of Quebec. One of them, of course, was that all the provinces should be treated equally, and a lot of people have objected to that provision. But there would have been no Meech Lake without it, because particularly some of the western premiers said they would be put in an inferior position. If Quebec had to approve changes in the Constitution, so did they. This was not something that Quebec was asking for; it was something that some of the other premiers imposed as a condition of their acceptance.

I have also--I do not need to labour it again--pointed out that there will be no constitutional changes of any consequence as long as Quebec continues to boycott change, until it is willing to accept the Constitution.

I come to another point that I did not make before either of the committees in Parliament because things have happened since that make it relevant. The most serious result of the rejection of Meech Lake by even one provincial Legislature would be a gift of an issue to the Parti québécois, as Mr. Parizeau himself pointed out the other day. I ask myself, does any Premier or any sane Canadian really want to try to breathe new life into a political party now, happily, almost dead.

It has been alleged that Meech Lake would weaken the spending power of the Parliament of Canada. My opinion is that the spending power of Parliament would be strengthened by Meech Lake because it would be, for the first time, set out clearly in the Constitution. At the present time, the spending power of Parliament in areas of provincial jurisdiction is based upon a decision of the British Privy Council, which could presumably some day be changed by our Supreme Court, but if the spending power is put into the Constitution, it means there is no limit to the spending power of Parliament. I think that is one of the big gains of Meech Lake.

Under Meech Lake, a new shared-cost program, which is what concerns a lot of people, would not get started unless nearly all the provincial governments agreed to participate. It would not be any different from what it was before. No shared-cost program was ever started until the federal government had been practically sure that nearly all the provinces would participate. If one or two provinces opted out, the conditions--and this is really important--for compensation would have to be approved by Parliament.

They could not ask for an equivalent amount of money and use it for any purpose they like, unless Parliament was crazy enough to appropriate it unconditionally. There would be no automatic and unconditional payment. Parliament would have the final word on the terms of any shared-cost program and on the terms of any compensation to a province which opted out. So these great fears, that this was some way some province could get a bonanza by opting out, are really, if you read the accord, totally unfounded.

It is my opinion and the opinion of several of my friends--like the Honourable Gordon Robertson, who has nearly as much experience of this business as I have, and much more recent experience--that if Meech Lake is not approved, there will be no chance to reconcile Quebec for another generation. If they are rebuffed with these very modest terms, this grievance is going to fester, and if it is allowed to fester, my prediction is that reconciliation will never again be possible on such moderate and reasonable terms as are set out in the Meech Lake-Langevin accord.

There is one other point that troubles a lot of people, and that is the power which Meech Lake would give to the premiers to recommend appointments of Supreme Court judges and senators. To whom do they recommend them? To the Prime Minister. It is argued that this would reduce the unrestricted scope of the Prime Minister's patronage. That is quite true; it would. But it would not reduce the federal power since the final word on such appointments would rest with the Prime Minister of Canada. He could not any longer choose anybody he liked, but he could turn down anyone he did not like.

Therefore, it does not seem to me the federal power is reduced, it is just what I have regarded as a rather unrestricted prerogative of the Prime Minister--not even of the government of Canada but of the Prime Minister.

1040

Sometimes it has not been used too well, though not in the case of judges. I think the record of appointment of Supreme Court judges is excellent, but I would not like to endorse the appointment of every senator who has been appointed.

It is my opinion, finally, that the incorporation of the Meech Lake-Langevin accord would strengthen, not weaken, national unity and strengthen, not weaken, the national government. But it is not the Constitution that determines whether we will have a strong or weak national government. Whether Canada has strong national governments in the future will depend, just as it has in the past, not on the Constitution but on the voters, and that is as it should be.

Mr. Chairman: Thank you very much for both a historical and a present look at the accord. I think you have touched on probably just about every issue that at some point or another has been brought before us over the past number of weeks.

Mr. Morin: I am happy again to say that I have another good constituent of mine.

Mr. Breaugh: Is there anybody left out there?

Mr. Chairman: You must have sent letters out, Mr. Morin.

Mr. Morin: Mr. Pickersgill, I have two questions for you. The first one is, how do you respond to critics who state that the recognition of Quebec's distinctness creates inequality among provinces and among Canadians?

Hon. Mr. Pickersgill: I respond, as I think I did in my opening statement, by saying that it recognizes a fact that apparently the government and the Legislature of Quebec would like to have recognized, but it does not give to the Legislature or the government of Quebec any jurisdiction that it



does not have already. Therefore, it does not seem to me that it in any way increases any power of the Quebec society.

In any event, a lot of people, including the former Prime Minister, did not say "the character of the Quebec society." He said it was "special status." With due respect to Mr. Trudeau, that is a distortion of Meech Lake--not his only distortion, incidentally.

Mr. Morin: The second question would be that the granting of rights to all provinces so as to allow Quebec to defend its culture will balkanize the country; how do you respond to that?

Hon. Mr. Pickersgill: I am afraid you had better repeat your question.

Mr. Morin: How do you respond to critics who state that the granting of rights to all provinces so as to allow Quebec to defend its culture will balkanize the country?

Hon. Mr. Pickersgill: I had not seen that criticism before. The criticism I saw was that the immigration section would balkanize the country. The immigration section was essentially in the British North America Act in 1867. There is nothing new about it except in a formal sense. The government of Ontario under George Drew started an immigration policy, bringing people over by air and so on. The government of Quebec was given by Mr. Trudeau's government some additional scope within its powers to select immigrants. But the final word has always been with the Parliament of Canada.

I know this pretty well. I was the Minister of Citizenship and Immigration for three and a half years. Perhaps I did more to balkanize the country than anyone else, because there were more immigrants admitted during that period than in any period since 1913. I did not do it to balkanize the country, nor do I think it has. I think our immigration during that period has added a good deal to the life and vitality of the country. My experience is that nearly all of these immigrants who came in my day have become citizens, and very good citizens, too.

Mr. Allen: I can see why Mr. Morin has such a composed countenance and relaxed style in the Legislature. He simply has to sit back and let all his eminently able constituents run the country and he can just watch. It is nice to be introduced to them one by one at these hearings.

May I first thank you, sir, for both the history and the home truths you have conveyed to us from your long experience in Canadian politics.

I would like to go back to the first presentation we had before this committee, by Professor Behiels from the University of Ottawa history department. On looking over that paper again, I was struck by the assertion in that document that during the period from 1982 to 1987, the Quebec government had in fact held the country up to blackmail. Is that your opinion of that period of our history and Quebec's posture, or is there another way of looking at that which is rather more positive and hopeful?

Hon. Mr. Pickersgill: I just think it is totally untrue. Particularly while Mr. Lévesque was Premier, they could have done a lot of things that would have made the government of the country very difficult, but Mr. Lévesque, to his great credit--and I was certainly no supporter of

his--had a great respect for the law, unlike some of the people in his party. He accepted the verdict of his referendum sadly, but he accepted it.

It seemed to me that when he came to Ottawa for the conference after the referendum, the conference that ended with patriation, he was really trying to find some kind of solution. He even went to the point, which no Premier of Quebec has ever done before or since, of saying that if certain other changes were made, he would not require a veto.

I used the word "sleazy," but I think that is pretty strong. I thought the performance at that conference, the way the other premiers, excluding the premiers of Ontario and New Brunswick, doublecrossed Mr. Lévesque, was done in a pretty nasty fashion. At the same time, I say that in politics and in life you have to decide which is the more important and which is more in the real interest. I think patriation was more in the real interest than objections to the way it was done.

Since the present Premier has been head of the government of Quebec, he has gone out of his way to set out the conditions under which the province would accept the thing totally. They were so modest that I could hardly believe that he would get approval for them. Of course, the opposition in the National Assembly did not approve, but it was approved promptly by the great majority.

Mr. Allen: Thank you for the answer. I think that helps us very much in our review of that period of background to the Meech Lake document.

Just a last quick question, and I want only a brief answer. I do not want a whole review of all the Trudeau years, but you were very close to all that period of federal politics.

Hon. Mr. Pickersgill: I was a public servant when Mr. Trudeau became Prime Minister.

Mr. Allen: I really mean to say that you were a very close observer, because you were very close on hand.

Hon. Mr. Pickersgill: I certainly was.

Mr. Allen: Yes. What I would like to ask you is whether, in its overall cast, the Meech Lake agreement does not reflect much of the practice of our federal politics during those years?

Hon. Mr. Pickersgill: Reflect much? I did not understand.

Mr. Allen: Reflect much of the political practice of dominion-provincial relations and the posture of the federal government through those years.

Hon. Mr. Pickersgill: If by that you mean that everything in Meech Lake was in one fashion or another proposed by Mr. Trudeau and his government as a means of getting support for patriation, that is true. There is nothing whatever in Meech Lake that at one time or another was not proposed to the provinces by the Trudeau government, mostly by the Prime Minister himself. That is why I find his present posture so difficult to understand.

Mr. Allen: Yes, and I would say likewise.

Mr. Offer: Thank you very much for your presentation, Mr.

Pickersgill. In your presentation and in your deputation, you spoke of Meech Lake as being a miracle, and I take it from page 2 that it is only the fourth time since Confederation that there has been this unanimous agreement on substantial amendments to the Constitution. As you are very well aware and as you have certainly touched on already, we have heard some substantial concerns from different persons dealing with particular aspects of the agreement.

Hon. Mr. Pickersgill: Right.

Mr. Offer: I do not really want to touch too much on what the concerns may be, but you then go on and say that the approval of Meech Lake will not set the Constitution in concrete. I am really directing my question to the whole unanimity type of formula with respect to changing Meech Lake.

Hon. Mr. Pickersgill: You mean changing the Constitution.

Mr. Offer: Yes. I am wondering if you could expand somewhat on how it might not set the Constitution in concrete, when you have indicated that it was only the fourth time since Confederation that we have had this type of situation.

Hon. Mr. Pickersgill: The fourth time includes Meech Lake, and there have been only three times since Confederation when amendments have been made affecting the jurisdiction of Parliament and the legislatures. Only three times of any substantial character that is; I think there was one correction of an error or something.

People talk about the Meech Lake accord requiring unanimity. What it does is to increase the number of sections of the Constitution: not the whole Constitution but the number of sections that require approval of all the legislatures. They were there originally. The Queen could not be changed without the consent of all the provincial authorities. I have the document here, but you have all read it. It added a few more to those. There are still a lot of changes that can be made without unanimous approval. The main scope cannot be. I would also say that, considering our experience from 1967 to 1982, we seem to be pretty well satisfied not to be constantly changing the Constitution.

The countries that are constantly changing their constitutions nearly always have revolutions. Canada is the product of antirevolutionaries. The French Canadians never approved the French Revolution, even though it happened. My ancestors on my mother's side were all in North America and not in what is now Canada before the American Revolution. They came here because they did not like revolutions. The fact that we have a stable Constitution and also a pretty stable society, when you look around the world today, does not fill me with alarm, but it seems to me that a lot of the people who have objected to various aspects of Meech Lake are addressing the wrong subject.

If there are additional rights that women want, the proper way to go is to the legislatures. It is not to try to put them in the Constitution without the approval of the legislatures. If there are any other additional rights or additional conditions that have enough support behind them--and that surely is essential if you believe in democratic government at all--the proper way is to get enough public steam behind these things to get the Constitution changed.

The thing about Meech Lake I think perhaps was a little silly but it has opened the door wide because there is going to be a constitutional conference every year to consider new things. It even prescribes a couple of things that



have to be considered. Whether they will be successful I do not know. I can tell you that I certainly hope at the first conference after Meech Lake everybody forgets about the silly suggestion that the federal jurisdiction over fisheries should be diminished in any way. The Senate is another matter.

Mr. Cordiano: I will try to be brief with my question. I want to ask you about some of the comments you made in your submission to the special joint committee, when you expressed the view with respect to the whole question of sexual equality rights in the charter and the fact that a reference to the courts on the issue to uphold the charter--and there is some question as to whether the charter has been--

Hon. Mr. Pickersgill: I am not hearing you very well. I am sorry.

1100

Mr. Cordiano: I am talking about the comments you made before the special joint committee with respect to the charter and the view some groups, particularly women's groups, hold that the charter may have somehow been invalidated by the "distinct society" clause or the whole Meech Lake accord. You put it this way, that you did not believe a court reference was necessary. Is that because you feel the charter is still upheld as far as Meech Lake is concerned?

Hon. Mr. Pickersgill: The charter says categorically, in the most express language, that--I cannot remember the words; I could dig them out--there must be no discrimination: men and women are equal. I would not have objected to putting that in again, as was done. It also says that all the aboriginal rights--

Mr. Cordiano: Section 16, yes.

Hon. Mr. Pickersgill: That is in the charter. That was put in again at the Langevin building because, for some reason or other, a lot of aboriginal leaders have expressed fears. Something was put in about multiculturalism. It is because women were not also included that this question seems to have arisen. But what we should not forget is that if there are any dangers, and I do not think there are, that any rights women have might ever be taken away, of course they could be taken away by the "notwithstanding" clause Mr. Trudeau put in, but there is nothing in Meech Lake that could take them away. Absolutely nothing.

Mr. Chairman: Thank you very much, Mr. Pickersgill, for joining us this morning, and not only for your presentation but also for answering questions which have covered a good number of topics. We appreciate having someone with the experience and the overview that you are able to bring to these issues.

We did also meet, as you mentioned, Gordon Robertson, the former Clerk of the Privy Council, who was with us for some time yesterday. I think between the two of you you have probably given us the broadest sweep in terms of constitutional discussions that we have had to date. We thank you again for coming.

Hon. Mr. Pickersgill: It has been a great satisfaction to me, as it is to all people who are retired politicians, to get a chance to shoot off my face again.

Mr. Chairman: We enjoy it too.

Mr. Breaugh: We know what you are talking about.

Hon. Mr. Pickersgill: I am very grateful to you for listening to me, I think almost too politely.

Mr. Chairman: I now call upon the representatives of the Freedom of Choice Movement, Dr. R. A. Forse, the president, and Dr. R. Fletcher, the first vice-president. Gentlemen, if you would be good enough to come forward, we have a copy of the submission you have provided to us. At the outset, I would like to thank you for coming and welcome you here this morning. I will simply turn the microphone over to you, and if you would like to go ahead with your presentation, we will then follow up with questions.

#### FREEDOM OF CHOICE MOVEMENT

Dr. Forse: Mr. Chairman, members of the select committee and those who are left, I should first introduce myself. I am Dr. Armour Forse, a physician and surgeon practising in Montreal West and president of the Freedom of Choice Movement. With me is Dr. Ronald Fletcher, a dentist practising in Montreal and vice-president of the Freedom of Choice Movement.

You have been given copies of the constitution of the movement, founded and incorporated on January 2, 1979, in Quebec. You will note that we are a nonpolitical movement which affirms the following principles:

Canada is one nation and therefore we reject the concept that the abrogation of English-language rights in Quebec is necessary to preserve unity.

Rights, privileges and powers guaranteed under the British North America Act cannot be abrogated by any provincial Legislature or executive.

All individuals have equal rights before the law, irrespective of their language, race, colour, gender, religion or national origin.

Canada is a multicultural society where English and French language rights should be advanced and never repressed by law.

We strongly uphold and support the Canada envisaged by the Fathers of Confederation. Read their debates and the British North America Act and it is absolutely clear that they intended Quebec and the federal government to have equal English and French language rights. Of course, they hoped that these rights would spread across the country.

There is confusion about the meaning of "distinct society" and the different interpretations of its meaning by almost everyone, including Premier Bourassa of Quebec and Jacques-Yvan Morin, a former cabinet minister with the Parti québécois and a professor of constitutional law.

We must consider the constitutional process that gave us the accord. Eleven individuals met and agreed to change the Constitution. Constitutions are not something that should be treated as normal legislation. Where is the constitutional process? Where is the consultation? By what mandate do these 11 decide our future and, more important, who speaks for the English-speaking people of Quebec during these meetings? Not the government of Quebec, not the federal government and certainly not the other nine Premiers.

We are ignored. We represent five or six seats in the National Assembly and the same in Ottawa. We are obviously unimportant. But remember that the

nonfrancophone minority in Quebec is larger in number than the population of six of the 10 provinces of Canada. That is why we are here, to speak on behalf of the English-speaking minority in Quebec. A recent La Presse poll in April 1987 revealed that 88 per cent of the English-speaking Montrealers oppose article 1 of Bill 101, that is, that French is the official language of Quebec. When I talk to people, I would say it is closer to 100 per cent.

I would like to read to you from the foreword to a book written by past Senator Forsey in 1980. I feel this holds today. I would like you to listen very carefully:

"Two features of the present situation of the Quebec English-speaking minority appal me.

"The first is the degree to which many of its 'leaders' (what are sometimes called its 'natural' or 'traditional' leaders) and some of its 'intellectuals' seem ready to accept a status of second-class citizens." That is what we are, or even third and fourth. Fellow Canadians, this is not right, not just, not fair and a challenge to you all.

He says: "I am tired of these Dukes of Plaza Toro, who lead their regiment from behind...I am tired of 'these gentle warblers of the grove; these moderate Whigs and temperate statesmen,' as Lord Chatham called the Rockingham Whigs. I am frightened by their willingness to lie down on their backs with all four feet in the air."

He goes on: "Second"--and important to all of you--"I am even more dismayed by the apparent growing willingness of English-speaking Canada outside Quebec to leave the Quebec English-speaking minority to its fate; to offer it as a reasonable, acceptable and living sacrifice to the preservation of a 'Canada' which would be hardly more than a splash on the map with a six-letter label, a pale ghost of the deceased Canadian nation. (One has only to look at the numerous proposals to leave each province to settle its language question as the majority in that province sees fit.)

"These people need to be told that there is in Quebec a large, active and deep-rooted English-speaking community. It is close to 900,000 souls." It is fewer now.

1110

The background of the present legal cases against Bill 101: You will note, and I say note, that the previous speaker gave an excellent historical background way back. I am going to try to give you an historical background to the present, and you will note that probably none of them, certainly while I was here, mentioned Bill 22 or Bill 101.

The Freedom of Choice Movement is presently assisting in the Allan Singer Ltd. case now before the Supreme Court of Canada. The court hearing was held in November and involves a fundamental right that was part of the Confederation agreement, the right to use the English language anywhere in Canada. This fundamental right has been under attack in Quebec--Bill 22 and Bill 101--but a Court of Appeal opinion, the decision against, with dissenting judges Montgomery and Paré, challenged Quebec's claim that language is *intra vires* or that it now comes under section 92 of the British North America Act.

I would like to read to you what Mr. Justice Montgomery said at that time. It is submitted that Mr. Justice Montgomery was correct in stating to



the court: "I would look at the presumed intention of the Parliament of the United Kingdom in enacting the British North America Act. I find it utterly inconceivable that Parliament, sitting in England, had the slightest intention of giving to any province the right to ban, under penalty, the use of the English language, now one of the two official languages of Canada."

This attack has met a major challenge in the Allan Singer Ltd. case, as for the first time Quebec's legislative competence to proscribe English in the public domain was heard by the Supreme Court of Canada. We do not have a decision as yet.

I think we should look back at what Macdonald said at the time of Confederation and during the debates, and he spoke for the government of Canada.

?? "We have given the general legislatures all the great subjects of legislation. We have conferred on them, not only specifically and in detail, all the powers which are incidents of sovereignty, but we have expressly declared that all subjects of general interest not distinctly and exclusively conferred upon them, the local governments, the local legislatures, shall be conferred upon the general government and legislatures. We have the Confederation, one government, one people, instead of five governments and five peoples; one united province with the local governments and legislatures subordinate to the general government and legislatures."

As a previous speaker said, with this Constitution, we have built an outstanding country.

This court case relates directly to the Meech Lake agreement in that a number of the proposed changes are ambiguous and, if not modified, will adversely affect the basic human rights, including language rights of the nonfrancophone community concentrated mostly in the southwestern sectors of Quebec.

The Freedom of Choice Movement supported the case of Duncan Cross Macdonald and the city of Montreal appeal heard in 1984, with judgement delivered in 1986. I would like to forcefully point out to the select committee that it took us from 1981 to 1986 to get a judgement on the Macdonald case from the Supreme Court of Canada, and justice delayed is justice denied.

I must next stress the judgement that English-speaking litigants are no longer entitled to reply in English in a Quebec court.

I wish to emphasize here the dissenting reasons by the Hon. Mme. Justice Wilson, who wrote: "In summary, because of the entrenched status of the section 133 rights, the aspect of due process which is contained in my delineation of their content, and the fact that their denial in this instance was inherent in and a result of the very process to which the appellant was subject, I would conclude that any court proceedings in which a litigant is deprived of his or her linguistic rights under section 133 is a proceeding conducted without jurisdiction."

If you read the judgement in the Macdonald case, you will be impressed with her presentation. I submit to you that, unquestionably, although not a lawyer, it is certainly to a citizen superior.

The choice of language in Quebec courts was said to have been reserved

for judges and was the narrowest decision that you could hope to come out of the court, but in 1975, when the federal government was making Canada bilingual, and rightly so, it was a very broad interpretation. When it applied to the English-speaking people in Quebec, it was very narrow.

The Freedom of Choice Movement used the Mercure intervention to question the conclusion of the Macdonald case. Having intervened in the Manitoba case for French-language rights under section 23 of the Manitoba Act, we instructed our lawyer to stand in the Supreme Court of Canada in the Mercure case supporting French-language rights, but to state that in no way can this court give French-language rights outside of Quebec without giving English-language rights in Quebec.

I personally became involved, as a physician, when I started to see patients. The first one to hit me was a man of 43 who lost his job because he could not speak French, when his job did not require that he speak French. He had two young children. He came to my office with a huge duodenal ulcer, extremely depressed and out of work. It is a continuing sad story. I saw many of them. I spoke out quietly about this. I am still shocked and surprised that many more have not.

Successive Quebec governments, both federalist and separatist, have tried to eliminate English as an equal and official language and, for this reason, we must question the inclusion of amendment 2(b), "the recognition that Quebec constitutes within Canada a distinct society."

On the definition of "a distinct society," the meaning of a distinct--that is, separate--society must be spelled out, as the Quebec government has enacted legislation, Bill 22 and Bill 101, declaring that French is the official language of Quebec. This eliminated language rights that had existed for over 200 years since the royal proclamation of 1763, and assigned penalties under the Criminal Code for anyone defying this provincial statute by insisting upon the right to use English. One of the boys who started out with me for bilingualism, to have the Canada that the Fathers of Confederation decided upon, went to jail for asking to be served in his own language, English.

The conferring of the status of a distinct linguistic society upon one national group in Quebec to try to satisfy alleged grievances, secessionist threats and a political objective to the detriment of the other large linguistic community is unacceptable and a violation of the rights guaranteed Quebec's English-speaking community in the original Confederation agreement.

Lord Durham referred to Lower Canada as "two nations warring in the bosom of a single state." The previous speaker stated how considerate the Canadian Parliament was to give the French, and rightly so, their language rights. I sat on the banks of the St. Lawrence River and talked Premier Hatfield into making New Brunswick bilingual. I said, "You have 40 per cent French Canadians, sir, and they need their language rights." I have the first copy of the bill. He sent it to me.

The aftermath of the rebellion of 1837 and the 1849 annexation manifesto by English-speaking Quebecers was resolved by an agreement in Confederation to guarantee and respect the rights of both linguistic communities in Quebec.

Remember, this was the only part of the country where the two groups coexisted in any large number, and still do. For this reason, the suggestion that Quebec is only for the Québécois cannot be considered until the two major

cases before the Supreme Court questioning the constitutionality of unilingual provincial French-language statutes are resolved.

We are very concerned that the interpretation of "a distinct society" could result in the Quebec provincial government passing unjust laws further restricting rights--language, educational and professional rights to practice and the right to work--of the English-speaking minority of approximately one million Canadians. I hope you will comprehend that it takes many years to get constitutional changes into the Supreme Court and then probably, as we have had in every case, a dissenting decision, as in the Mercure case which was just passed; I think this is very important and I hope to speak to it later. These facts make it imperative that any constitutional changes in the British North America Act of 1867, which has served Canada well, must be absolutely and unquestionably clear to everyone. It is not necessary that we press to have changes.

#### 1120

The powers of Parliament, section 91 of the BNA Act of 1949: The federal government itself does not seem to have the legislative competence to adversely affect rights or privileges of any class of persons with respect to schools or as regards the use of the English or French language that form part of the original Confederation agreement. The late Chief Justice Laskin said, "Rights can be increased but never decreased." Remember, it was an agreement.

A subordinate provincial Legislature in a federal union has enacted legislation that restricts Canadian citizens from enjoying their civil rights by imposing anti-English language restrictions that it claims are intra vires or come under section 92 of the BNA Act. This clearly must be resolved as it compromises the Canadian Citizenship Act by denying naturalized Canadian citizens the same rights as native-born.

The changes to Canada's duality--I will try to be brief with some of the rest of it: The original duality concept was for two equal and official languages in Quebec, where there was the presence of two large linguistic communities. This is why French was granted official equality in Quebec and within the federal Legislature and courts. Meech Lake seeks to abrogate the duality of Quebec and instead replace it with a duality between a French-language zone and an English-language zone outside of Quebec. There is no historical justification for this new duality as it will deny the language rights of almost one million people in the metropolitan area of Montreal alone.

The federal government's support of Bill 101: The federal government--and this may surprise you--has not opposed Quebec's unilingual claims and has accepted its narrow, restrictive definition that English has a very limited application within Quebec. Contrary to popular myth, the federal government acceded to Quebec's demands over the charter by exempting the provincial government from compliance with the minority education rights clause.

I went to the Supreme Court with the Allan Singer Ltd. case and we--myself and a few of our friends--paid for it out of our own pockets with dollars we had paid taxes on. We had to take the language issue to the Supreme Court of Canada, Canadians. I hope you feel the shame that I felt having to do it. We were denied financial assistance by the language panel. Look up the constitution of the language panel; we have no just or fair representation. They have turned down all the groups in Quebec, including the school group, who are trying to take language rights to the Supreme Court, and we have had to fund them ourselves.



For the large anglo-ethnic community that voted 95 per cent for Canada, the result is a disaster. The federal government also accepted Quebec's five constitutional demands, so the "distinct society" clause would seem to be a de facto recognition of Quebec's status as a unilingual, French-speaking nation-state. This will never be accepted by the large English-speaking linguistic community of southwestern Quebec.

Article 1 of Bill 101, that French is the official language of Quebec, has yet to be heard in the Supreme Court of Canada. This highly contentious provincial statute has yet to be given a full hearing by the Supreme Court of Canada. Several articles of Bill 101 have been struck down by the Supreme Court, but the main article declaring French alone the official language of Quebec has yet to be heard by the Supreme Court.

As this denial of fundamental language rights has had such an adverse effect upon the large nonfrancophone community of southwestern Quebec and caused an exodus of 300,000 people between 1976 and 1981, and 200,000 more between 1981 and 1986, the matter of the legislative competence of either the federal government or a provincial government to proscribe the use of English or to demand, under penalty, the concurrent use of French has yet to be resolved by the Supreme Court of Canada.

This section defining the linguistic jurisdiction of a distinct society should be referred by Parliament to the Supreme Court of Canada for a prior ruling. All the Prime Minister would have to do would be to walk down the street, give it to the Supreme Court and ask for a judgement on it, as Trudeau did when he wanted to bring the Constitution back. It is a very simple procedure. When I presented this to the subcommittee of the Senate, one of the senators said, "Yes, but he would not like what he would hear," and I agree. I think that is probably true.

The federal Department of Justice prepared a full legal opinion, under the then Minister of Justice, Ron Basford, on Bill 101. He put it away. We cannot get our hands on it. I think this committee should request to know that judgement.

The primordial claims of Quebec: On the basis of our experience in Quebec, I wrote several letters and you have copies of them. One, I think, was sent to all the premiers and certainly one to all the members of Parliament. I wrote several letters to all the premiers and to every member of Parliament informing them of the danger to Canada--they are informed--of giving Quebec all its demands. They are the same demands that the Parti québécois wanted as a first step to separation of Quebec from Canada.

Quebec became part of Canada in 1867, still is and should always remain part of Canada. I do not believe for one minute it will be thinking of leaving Canada. First and foremost, 35 per cent of its income comes from transferred money. We have something like the Department of Regional Industrial Expansion finances, and Quebec gets 40 per cent, while Newfoundland gets two per cent. I doubt that it will leave.

However, if Quebec should entertain separation, it should be made absolutely clear that Quebec leaves Confederation with exactly what Quebec brought to Confederation and no more. The issue of the primordial claim of the Quebec government to the original territory of the province, including the two large tracts of land placed under its administration by Canada in 1898 and 1912, should be spelled out in the event of a dispute between Canada and Quebec that could lead to a secession from the present Confederation.

As Quebec did not recognize the Canadian Charter of Rights and Freedoms--although it had been exempted by then Minister of Justice Chrétien from compliance with the minority language rights and still does not recognize the Canada clause, although the Supreme Court has ruled that it is bound and the previous speaker said it always follows it; it certainly follows the ones that it favours but certainly does not follow the ones it does not like--we think it is unreasonable to ask that the large nonfrancophone community, approximately one million people, must live from provincial election to provincial election without any specific guarantees of their rights as Canadian citizens.

The present difficulties over broken promises on bilingual signs and over the access to schools and social services in English do not bode well for the future and make it incumbent that this committee establish the parameters of what constitutes a distinct society in the linguistic, sociological and geographic sense.

The bilingualism and biculturalism concept goes out the window with Meech Lake. The Meech Lake agreement and the prospect of a nation-state within Canada--and I include this because we do have to realize that of the four original dominions, only Canada, linguistic--and I tell you, that is racial--and South Africa, racial, have attempted to establish pure zones within which certain nationality groups enjoy more rights than others.

Alexander Brady, in his book *The Democracy of the Dominions*, makes mention of the possibility of this at the time of his writing by noting that thus small groups of ardent nationalists in South Africa and Quebec believe that the state must be coterminous with the nation and the nation with the state, and for them the nation means their own exclusive language group, with its solidarity of culture. Clearly, a concept as ambiguous as a distinct society embracing one nationality group within a specific territory must be clarified by a prior ruling by the Supreme Court of Canada.

#### 1130

Senate Vacancies: I can skip that, except for saying appointments should carry with them guarantees. We have no guarantees.

Agreement on Immigration and Aliens: The notion of linguistic zones for Canadian immigration policy, with the incorporation of the Cullen-Couture agreement into a national framework, is disturbing for citizens wanting to bring in immigrants who complement their own community. In the Quebec zone, for example, this will preclude people of British Isles origin from consideration, despite the fact their forefathers, mine and many others', cleared and developed much of the present territory of the province.

The present exodus out of Quebec is another disturbing factor. The Quebec government's own investigation of this phenomenon in 1985 claimed, in its report to the Legislature, it did not know why.

Supreme Court of Canada: This, I submit to you, is very important. The stipulation that three judges of the Supreme Court of Canada will be appointed from Quebec on the recommendation of the government of Quebec is not consistent with the democratic principle of proportional representation. French-speaking Quebecers make up 22 per cent of the total population and yet they would be entitled to 33 per cent of the judges. Not that they are not excellent judges--I submit they are--but you must realize that the one million English-speaking Quebecers do not have any.

There are three excellent judges, but all from the French-Canadian side, representing Quebec at the present time. If you wish to look up the judgements on the Macdonald case and on the Mercure case, you will find them enlightening. Even though they are excellent judges, they certainly favour the judgement that favours what you would expect them to.

Shared-Cost Programs: You know about that. The provision of reasonable compensation to provinces not participating in a national shared-cost program would further diminish accountability for federal taxes paid by nonfrancophones in Quebec.

We concluded that a Supreme Court test was mandatory. Because the proposed changes are so far-reaching and will have such an adverse effect upon the large English-speaking community situated in southwestern Quebec, we feel it is essential that the "distinct society" clause and the duality concept be referred to the Supreme Court of Canada for a judicial ruling on the implications for Canadians of all nationalities. The alleged threat of secession does not provide the government with any moral or legal justification for abrogating the civil rights of an innocent third party, like the English-speaking community in Quebec.

The introduction of what is known as the Belgian syndrome--we have said this for a long time--into Canada will create the same kind of divisions between the two major linguistic communities, while the parallel of pure language zones is a policy of segregation similar to the malaise that has torn apart one of the original four dominions, the Union of South Africa. I submit that we have members of our federal Parliament trying to tell others who are desperately struggling with their problems how to solve them when we have the same problems right here in our own country.

As a private, nonprofit, voluntary organization that that has fought to restore bilingualism in Quebec, a right that had endured for over 200 years, we can attest to the economic devastation that has plagued Montreal since the passage of racist language regulations. The federal government has been forced to pour billions of dollars in support funds into the region to try to offset these losses, but this in turn has deprived many other deserving regions from receiving their fair share of national revenues.

I have given you copies of some of my letters to the premiers and members of Parliament. We were shocked at the total lack of understanding by the parliamentary committee of the deprivation of human rights to the English-speaking Canadians living in Quebec by Bill 101 and to the effects of the Meech Lake accord on Bill 101.

Your Premier (Mr. Peterson) wrote to me on July 18, 1987, emphasizing Quebec as a distinct society and linguistic duality, as a fundamental characteristic of Canada. He also emphasized the role of the Legislature and the government of Quebec to preserve and promote Quebec as a distinct society. I sincerely hope the premiers signed the Meech Lake accord with incorrect knowledge, false assumptions and misguided trust rather than for personal power, as expressed to us by the senators. Since passing the Meech Lake accord, the Quebec government has continued a constant harassment of the English-speaking Canadians living in Quebec.

Austria is now reviewing its collaboration with the type of nationalism that asserts the dominance of one national group over all others and is suffering from its shameful guilt. Our Prime Minister, our premiers and our members of Parliament have been informed about the persecution of over one



million English-speaking Canadians living in Quebec, including the area of the two large tracts of land placed under Quebec's administration. To date, not one has mentioned Bill 101 and how it has driven approximately 500,000 Canadians from their homes in Quebec. Even an animal will leave an environment where it is being harassed daily and also deprived of the means of earning its livelihood.

History is recording this ugly collaboration with nationalism by the leaders of the three parties in Parliament. A future Canadian government will some day have to acknowledge its complicity with racist language laws aimed at asserting the dominance of one language group over all others in Quebec.

In closing, I would like to refer you to many clippings we have here from columnists and here is one of the most recent, March 23: "PM Must Face the Meech Accord Weaknesses."

"D'Iberville Fortier spoke clearly, strongly, yesterday against the repression of English in Quebec and against the weak minority language guarantees contained in the Meech Lake accord.

"The salvation of French, in Quebec or elsewhere, must surely lie in positively asserting its own demographic weight, cultural vigour and innate attractiveness, and not in humbling the competition."

"Take that, Bill 101. Now, why has Prime Minister Brian Mulroney, the leading English-speaking politician from Quebec, never made a similar strong statement?

"The commissioner, while calling the Meech Lake constitutional accord 'a major step in the right direction,' still expressed serious reservations....

"He was concerned that the accord recognizes the role of Quebec 'to preserve and promote the distinct identity of Quebec,' but that the federal government was not given a similar mandate to 'promote' the official languages across the country."

Here is another one that says Mulroney echoes Groulx. As you all know, he was a nationalist. He says many of Mulroney's speechwriters emphasize the same nationalism and I believe this to be true.

He states this: "Mulroney slippery and false. With the glib charm of a toothpaste salesman, Brian Mulroney Wednesday gave his great speech in the Commons on the Meech Lake constitutional amendment. The speech was slick all right and it was shallow, tricky and false."

He says, "Those were the words of betrayal."

Past Senator Forsey, who humbles me in any discussion on the Constitution as he is so learned and so informed, says that the Meech Lake accord has a cornucopia of absurdities.

All I can say is that we have a pile of clippings confirming exactly what I have been saying to you and we would be glad to answer any questions you have.

Mr. Chairman: Thank you for a most forceful presentation and one which I think has very effectively underlined the concerns you have. You may be aware that we have had several presentations from English-speaking

organizations from Quebec and will have another one later this afternoon. They have touched upon some of those same issues, perhaps not quite from the context you have put forward. I suppose, as an Ontario committee, we have been focusing particularly on minority language issues with respect to the official language minority within our province, which has been of course the francophone group, but I think we are very much aware of the importance of the protection of the official language minorities. Obviously, what we would like to see for the francophone minority in Ontario, New Brunswick or wherever and the anglophone minority in Quebec is equal justice. I think we appreciate the strength of your statement and we will start the questions with Mr. Allen.

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Dr. Forse: Can I answer that by saying I feel you have been very reasonable and very considerate in your approach to the language issue. You have an increasing number of French-speaking Canadians, many of them leaving Quebec because of the circumstances there. I submit that there would be a terrible, terrible outcry if French Canadians anywhere in Canada were subjected to Bill 101.

English-speaking Canadians living in Quebec like the French Canadians and, for the most part, as individuals, get along well with the French Canadians. Of course, the people who are there, if you talk to them, can be divided quite literally now into three groups: those who are planning on getting out, those who would like very much to get out and those who cannot get out but are very distressed by the situation there.

I understand your concern about the French Canadians in Ontario, but as I say, they can certainly put a sign up in their own language. They can certainly get a job. They do not have anybody coming around telling them what language they have to speak. There are no language police spying on them. They are very fortunate compared with the English-speaking Canadians living in Quebec.

Mr. Chairman: I appreciate the point.

Mr. Allen: First of all, I want to acknowledge the very generous attitude that the many representatives of the English-language minority in Quebec have taken toward the question of bilingualism across the country. I know that Alliance Québec has taken out ads, for example, in the Globe and Mail at critical times in Ontario when the rights of francophones were somewhat endangered or were in question or where there was some possibility of them adding force to the argument for additional services for the French community in Ontario. Likewise, you referred to your own intervention in the Manitoba case. I really do appreciate that. I also want to say, before I get into my question, that I accept that there are some rather troubling aspects of the present situation you find yourselves in in the province.

When I come to the question of Meech Lake per se, however, I really find it difficult to understand the proposition that it undermines in any respect the bilingual thrust of the nation under the Royal Commission on Bilingualism and Biculturalism, under federal initiatives.

For example, if one takes a very close reading of section 2 under Meech Lake, first it is quite clear that there is an emphasis upon the propriety of there being an English-speaking minority in Quebec that is an extension of the larger language majority of the nation. Second, the role of the Parliament of Canada and of the provincial legislatures, and that must include the

Legislature of Quebec, is to preserve the fundamental dualism of language referred to in paragraph 2(1)(a). The government of Quebec is to "preserve and promote the distinct identity of Quebec," which is the way of saying the "distinct society" of Quebec. French minority groups that have come before us tell us that their legal advisers tell them this includes the promotion of the English-language minority in Quebec and that it is not something they have accorded to them as a benefit under subsection 2(2), where the language is "preserve" the minority language group in the other provinces.

When I look at the immigration section, I also note that for the first time in Canadian history, the province of Quebec has accepted the overriding force of federal standards in the immigration field. That was never stated under the previous Constitution and never accepted. Notwithstanding the entrenchment of the Cullen-Couture agreement, it nevertheless sits underneath that overriding emphasis on the propriety of the federal government insisting on national standards in immigration.

What I come back to is whether the essential problem you are up against is not the constitutional one that resides in these statements in Meech Lake, but the ongoing political problem of maintaining yourselves in the context of Quebec. Notwithstanding delays in courts, which is a political question, you still have section 133 and certainly some precedence of broad interpretation. You still have access to the courts. You still do have a constitutional entrenchment as a minority that no other minority language group of French background has in any other province.

Those things being so, I would like your response to the proposition that the problem is not Meech Lake, that the problem is essentially the ongoing political struggle you have, which I understand and sympathize with, but that is a horse of a different colour.

Dr. Forse: As I tried to point out in my brief, we must first get these language cases before the Supreme Court of Canada for decision. I would submit to you that, going back to the British North America Act, language comes under the jurisdiction of the federal government. St. Laurent said that, Diefenbaker said that and this certainly was my understanding. You cannot have 10 provinces, or 11 provinces if we get a new one, all deciding what language they are going to speak. We have one country and the federal government has decided we have two official languages.

How can they allow one province to ban one language and not take it to the Supreme Court and find a ruling? Why do citizens have to take it there and pay for it out of their own pockets? It is unthinkable, I submit to you. All of Canada should have screamed long ago and said, "Solve this problem." I do not think for a second that Quebec has the right to ban the English language, nor do I think any province has the right to ban any language.

I also believe in bilingualism and I certainly uphold that French Canadians anywhere in Canada should be treated equally. This should be done on a very intelligent--mind you, it is so simple; it is purely administrative. A French Canadian in Saskatchewan who goes to court should have a judge who speaks French and lawyers speaking his own language. It is not a big expense at all; it is purely administrative. These things to me, as I said to Premier Hatfield, are so simple. We are not arguing over that.

But Meech Lake is so ambiguous. I will never, and I submit that I do not think any of us will ever see the end of this. There are so many people and there is so much fog over Meech Lake. Meech Lake is a matter of



interpretation. There are so many ambiguities there. When such a person as Senator Forsey says it is filled with them, I think we should listen. Why change our Constitution and fill it with more ambiguities? The lawyers will have a heyday.

If you are going to change our Constitution, let us make loud and clear exactly what we have. It does not protect minorities and it should protect minorities. Thank God we have McKenna who realized it: bang. He was not originally there. McKenna has spoken out and what he is saying is absolutely true. It is just common sense that they protect the minorities and he is not going to be pushed around, thank God. I hope that your Premier will come to and realize that McKenna does not buy Bourassa's blackmail.

The previous speaker did not think we have had blackmail. We have had nothing but blackmail. I submit, coming to my office the other day was, "Racism is rampant in Ottawa." I understand those people who are thinking and saying that. All they have to do is look. Who, until Fortier spoke out, actually said one word in defence of English-speaking Canadians living in Quebec? I am sorry. That is the answer. We need protection and the Constitution should protect us as well as you should protect others.

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Oh, yes. This says, "Quebec Language Laws Humiliate Anglophones." It does not humiliate them; it persecutes them. Talk to any person living in Quebec. I am a Rotarian. Our Rotary Club had 496 members when they passed Bill 22, and was taking on tremendous projects. We are 180 now. A lot of those come in, like I do, with aches and pains. All our young people have gone. This is not fair, it is not just, and it should not be. If Meech Lake does not do something to correct it, it should. It is not right and not fair.

I am surprised, actually, that really intelligent, educated Canadians are spending so much time thrashing over an accord like Meech Lake when it obviously is ridiculous.

Mr. Allen: Do you think that if the premiers--Mr. Vander Zalm, Mr. Getty, Mr. Devine, etc.--other than Mr. Bourassa, had thought that anything in section 2 or the rest of the accord would establish official unilingualism in Quebec, they would have agreed to it?

Dr. Forse: I sincerely hope the premiers signed the Meech Lake accord with incorrect knowledge, and I believe it, false assumptions, and I believe it, and misguided trust, and I believe it. In Nova Scotia right now, they are saying that Premier Buchanan--and I wrote him several letters--was asleep. It is quite possible they were all asleep to have signed this. It is quite possible. Certainly, it was in the middle of the night. There is so much that is ridiculous in it. Some outstanding constitutional lawyers in Canada have said this.

Ramsay Cook said: "But your columnist is at his absolute best in describing the utter obscurity of the 'distinct society' clause. Only 'fuzzy brains' could possibly accept such calculated ambiguity, one on which the future of the country will rest if this accord is ever ratified." Men saying that sort of thing should stop you right cold.

Mr. Allen: That may be true. Mr. Cook was before us and we asked him for some alternative language that would say it better, about what the nature of Quebec was, and he did not have anything to tell us. With due respect, I

can only say that those people sometimes can be rather excessive in their own language.

Dr. Forse: You can call Quebec a distinct society. As Senator Leblanc said, the Acadians were here before the Quebecers: 1603. They are a distinct society. We have a lot of distinct societies in Canada. We want Quebec to thrive and prosper and there is no reason in the world that it cannot.

Canada started out, as I said, with a federal government, one central government, and look how well it has served us. The United States started out with a confederacy and they ended up in a war. Now they have a central government. It is just as obvious, as straightforward, as that. It is not confusing; it is simple. Now we are giving more powers to the provinces and we are breaking up the federal government.

Mr. Allen: Mr. Chairman, I think my interchange with the witness is becoming more of an argument than question and answer. I regret that, because I do sincerely say that I understand there are substantial political problems you are faced with and I do appreciate the interventions that you have made on behalf of minority groups across the country. Thank you very much.

Miss Roberts: I just have a brief question and that is with respect to some clarification on the Supreme Court of Canada. What you are suggesting is that there be two judges from within Quebec.

Dr. Forse: There are three.

Miss Roberts: What you are suggesting?

Dr. Forse: That we have a representative from the English-speaking community of one million people.

Miss Roberts: All I am asking is if you are suggesting that the judges be appointed on the basis of linguistic reasons, not necessarily on provincial--

Dr. Forse: Exactly, and it used to be that way until Trudeau changed it--fair and square; reasonable, decent consideration. Hatfield appointed La Forest from New Brunswick, and I hope they will alternate the next time and appoint an anglophone or English-speaking Canadian. Most of these problems can be solved in a reasonable, fair way.

Miss Roberts: I am just asking, the three from Quebec now who are there, or maybe as a result of this, have to be francophones.

Dr. Forse: They are.

Miss Roberts: But it does not have to be that way. A government in Quebec could appoint--

Dr. Forse: They could, but they are less likely to with "distinct society."

Miss Roberts: I understand your argument, I am just indicating that there is nothing to stop them. It has to be a political will.

Dr. Forse: That is right. "Distinct society" will override it.

Mr. Chairman: On behalf of the committee, I regret we are almost at 12 noon and we have another deputation to hear. I think, as I mentioned earlier, we have to be concerned about minority rights and the place of minority rights, not only within our Constitution but also within our political process. I think the concerns you have brought, which have been echoed by other groups--in the case of Ontario, francophone groups that want to see clearer protections for the official language minorities--are a message we have to receive and try to find ways to ensure that people are treated fairly wherever in the country.

It is in that respect that we thank you for your brief and for the material that you have also submitted along with it, and I think this has been a very useful exchange for us. We thank you for coming today.

Dr. Forse: Thank you for hearing it.

Mr. Chairman: I now call upon the representative of the Canadian Council on Social Development, Terrance Hunsley, the executive director. If there is anyone else, please come forward and be good enough to introduce yourself.

Mr. Weiler: I am Richard Weiler, policy associate with the council.

Mr. Chairman: Thank you. Welcome to you both. I realize we are a bit behind time, but that will not cut into the time we will spend with you, because we do want to make sure that you can go over all the issues you wish to present and I know we will have a number of questions afterwards.

#### CANADIAN COUNCIL ON SOCIAL DEVELOPMENT

Mr. Hunsley: Thank you very much. It is not often that our organization has presented before a provincial legislative committee. It is a pattern that has begun fairly recently in our history and one that we enjoy and hope to be able to pursue more in the future.

I will say just a word or two about our organization, if I can. We are a national voluntary organization and we focus on social policy, the broad range of social programs in Canada. We were formed originally in 1919, then as the Canadian Welfare Council, and have been involved in almost all of the major national programs as well as a great many of the provincial social programs over the years since.

We tend to work very much with a focus on research, on policy design, but with a unique aspect to it, and that is that as we do our research, as we do our policy development, we carry out extensive consultations with people in organizations throughout the country who are involved in social issues and have something to say about it. Our research and our recommendations are usually tempered by having been run before groups of people who may be justifiably sceptical as well as making real contributions to it.

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Richard Weiler, who is with me and who is an associate of the council, has a specific responsibility for what we refer to as our law and social development program. This program has been operating with one break since about 1975, but more or less consistently since 1980. Our interest in this subject began certainly in the early 1980s with a volunteer task force of experts from various parts of the country who became interested in the whole



area of repatriation of the Constitution, the development of the Charter of Rights and subsequent programs coming out of that, as well as the constitutional accord itself.

What I want to talk about today, though, represents only one very specific part of a broad range of interests that we have. Consequently, we have brought along with us three separate documents but have requested that only one of those documents be circulated at this point, because we feel it would be impossible, obviously, in this situation for you to be dealing with three of them.

One of them is our journal, which happens at this point to have a section within it dealing with one portion of the Meech Lake accord, specifically that referring to cost-shared programs. The second document is a more extensive brief, which we would like to present for your review, on the accord. Within that brief we do raise a number of concerns with the accord that we think need to be addressed, not least of which is a concern about the role of what could be considered a new institution of government, I suppose; that is, the formalizing of the first ministers' conferences and a concern about what relationship that will have to the role of Parliament and of provincial legislatures. You will have an opportunity to see that in your review later on.

I do want, though, to narrow down towards the subject we would like to spend as much of today's time on as possible, and that is a concern with social programs, particularly those which are cost-shared.

In our earlier brief, which we presented to the special joint committee of the Senate and the House of Commons, as well as to a separate Senate committee, we made a recommendation that the accord, if it were to be ratified, should only be so done in conjunction with an interpretation of that section dealing with national objectives and national shared-cost programs. We were concerned that there were assumptions being made which we felt were not valid.

One of those assumptions was that the courts would be able to carry out in the future the role of interpreting what are justifiable objectives, what are justifiable definitions of a term such as "compatibility" and so on and that they would be able to sort out the ambiguity in the wording. We do not agree with that as an interpretation. We do not think, first, that the courts are the appropriate body to be doing that. We really think that in their role of interpretation, the meaning and the intent behind the term should be clearly expressed so that their role can be more effective in the future.

The second problem we had was reflected at the time of the Meech Lake accord itself but then was subsequently reinforced by the report of the parliamentary committee when it tried to deal with the issue of definitions of terms. The parliamentary committee, in its own report, presents two quite different interpretations of the concept of national objectives.

If you will read the report, which I know you have, I am sure you will notice that in one clause within that they say they have looked at programs such as the Canada Health Act and the requirement for universality, comprehensiveness, portability and so on and they conclude that those kinds of requirements are really too specific to be considered as national objectives. So they say national objectives are really something quite different from that; they are more general, they are more broad.

Then, in the subsequent clause in their own report, they say, "However, all this is open to negotiation," and then "national objectives" may well include in the future not only such broad requirements as comprehensiveness, universality, etc., but specific standards of service and so on. If you read that carefully, I think you will find there is really quite a break in logic there, which I think reflects a real inconsistency in the way people are dealing with those terms.

The final assumption which we feel is made, not only in the accord but again spelled out in the parliamentary committee report, is a kind of assumption that Canada's social system is more or less fully developed. There may be some need for refinement in the future, but we are not going to see any more major national social programs.

We would like to differ quite clearly with that assumption or conclusion. In fact, it is our view that even during the next decade, we will see major changes in Canadian social programs. The seeds for those changes are sown even now. Even now, over the past two or three years, there are continuing federal-provincial negotiations going on for major national programs. Day care or child care is just the one that is most obvious and in some ways most recent.

There is another process that is going on, which is referred to in some cases as four-cornered agreements, where the departments of Employment and Immigration and Health and Welfare and provincial ministries of Community and Social Services, as well as advanced education and labour departments, which vary according to province, are involved in negotiating new and different ways of cost-sharing in programs that bring together social assistance and labour market programs.

In the field of legal aid, there are negotiations going on that are looking at some kind of reshuffling of not only civil but criminal legal aid. Young offenders' legislation is up for some substantial changes and may well be in the future. There is a variety of other programs that are up for some substantial changes as well. The vocational rehabilitation of disabled persons agreement is being substantially adjusted as well.

We think that as the Charter of Rights and Freedoms matures and is challenged in a number of new areas, large existing programs may be subject to major changes. Right now the extension of the spouse's allowance to widows and widowers under the age of 60 is being challenged in the courts. If that challenge is successful, it will mean a major rethinking of the way the old age security system works. There is another challenge that may well come to the age of 65 as an arbitrary age where the benefits that people receive change.

This whole range of programs may very well be open to substantial changes. It is our view that they will be and that there will be a need for major new national programs in the future.

We recommended earlier that ratification of the accord be subject to a shared interpretation of that clause, of that section, dealing with shared-cost social programs. Within that, we felt that the concept of national objectives was vital. We thought it was vital, not only to make it clear and to clarify the intent of the accord, but we thought it was vital because it holds the germ of important ideas for the future in the way people will look at and interpret their social programs. Because of that, we think it is necessary that the federal and provincial governments and the first ministers,

before their signing, spell out entirely and clearly what is meant by "national objectives."

As a contribution to that process, our organization put together a month and a half ago a volunteer task force of people who have expertise in a broad range of social programs and tried to draft what we thought would be a reasonable interpretation of the concept of national objectives that could be taken within the context of the present accord, but could spell out an understanding which would be useful and of value to both provincial and federal governments in the future, as well as facilitating the role of voluntary organizations throughout the country and the role of private individuals in understanding their own entitlements to social benefits.

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The document we have asked to be distributed is the document which was developed by that task force, subsequently reviewed by our executive board and adopted as representing a policy approach of the council.

If you look at that document, you will see that it mentions a bit about the background and history of social programs. It suggests that the history of cost-shared social programs in Canada has been more or less co-operative. It does not say that in a naïve sense. Obviously, there have been battles over the years, among provinces, between provinces and the federal government and so on, in the development of specific programs, but we think, all told, it can be seen as having generally been a co-operative process.

Our view is that cost-sharing, in the context of the federal spending power, is a situation which requires co-operation, yes, but if you turn that around, co-operation in the future between federal and provincial governments will require the federal spending power to be available and not to be unduly constrained by this agreement. The reason we suggest that is we do not think the jurisdictional issues on social programs are as clear as we might assume if we looked at the Constitution, sections 91 and 92, and said, "Well, yes, if it's social services and health-related programs, then that is provincial jurisdiction."

As you know, I am sure, while it may be fairly easy to separate out federal and provincial jurisdiction in specific program areas, that jurisdiction does not correspond to the separation of taxing powers. In fact, it has been necessary to have federal spending power in order to respond to the need for major programs. The provinces do not have the taxing powers that really correspond to their jurisdiction in various social program areas, so we make the point that cost-sharing is related not only to jurisdiction for programs, but also to the distribution of taxing powers.

We further point out that there is a very small gap between that issue, that concept, and the concept of equalization. Indeed, there are people throughout the country who receive programs and benefits through a provincial government, but who are paying taxes supporting those programs through the federal government, and they have legitimate expectations of both of those governments in the area of co-operation in the use of the spending power.

Finally, it is not entirely clear whether some programs are in federal or provincial jurisdiction because many issues around social programs transcend either a federal or a provincial issue. I just point out the issue of mobility. We are a very mobile society. I do not have recent figures, but several years ago we had a figure of something like 400,000 families who would



move from one province to another in Canada every year. That figure is probably at least that number now and perhaps even more. The issue of portability of benefits is very important to Canadians. It is very important that we can go from New Brunswick to Ontario, or from Ontario to another province, and have a continuity of our health coverage as we go. That is an issue which is not entirely a provincial issue, even though it may be a jurisdictional one.

Our points here then are that we see in the future a need for new and refined social programs, that we see a need for continuation of co-operation and that we think this co-operation has to be facilitated by a spending power which is not unduly constrained. We suggest that in this context, national objectives can serve a very important purpose. They can serve the purpose of tying together people's views of the benefits of social programs. As you know, people in Canada think of social programs very much in the context of their view of Canada. Medicare and nationalism are not so far apart in the way people generally view their entitlements.

We are suggesting an understanding, if you like, or perhaps a better definition would be a description of the criteria for the development of national objectives, which would then guide social programs and guide the cost-sharing function.

On page 11 of our document, you will see that we have listed four major criteria we think should be adopted by both federal and provincial governments as representing their understanding of the criteria for definition of any national objective.

First, the specific national social need that is to be addressed should be clarified in these national objectives. When we went through the history of the development of the individual shared-cost programs, we came clearly to the conclusion that there would not have been a shared-cost program in any of these areas if a national need had not been identified. We feel that there should be a statement of the desired goal and the anticipated outcome, the result, in a measurable sense, that governments intend to achieve through the social programs they establish.

This is a different approach from what we see in a number of the present cost-shared programs. If you use the Canada assistance plan as an example, you will see that federal requirements in that area tend to be administrative. Standards tend to be administrative. We are suggesting that we shift our focus from an emphasis on how we will deliver particular programs to what those programs achieve.

Staying with the Canada assistance plan, if the objective of the Canada assistance plan is to reduce poverty, then perhaps that should be the measure of compatibility for a program within that. The federal government might very well be able to open up to a broader range of administrative options as long as one were tied to a measure of the purpose of the outcome of the program. So that is the nature of that shift we are suggesting.

Second, we are suggesting that beyond that there are fundamental principles or, in some cases, considered social rights or benefits that are intended when there is the development of a national social program. Here, as examples of fundamental principles, we have used the example of the Canada Health Act, the issues of comprehensiveness, accessibility, universality and so on. If those are the intended basic principles to guide a program that are

going to be agreed on at the beginning for a program, then those fundamental principles should be spelled out in the national objectives.

Third, the recognition of the rights and the social entitlements of those people to whom a national objective is directed: We are suggesting here that if social programs, cost-shared programs, are in the future to have constitutional status, which is what we are giving them, then by the very definition of "constitution" itself the rights of individual citizens through the country to those programs should have equality, should have equal status, and that by including that in the definition of national objectives, one would do that. It is the idea that the intended rights and social entitlements to those programs of people in the country will be spelled out.

We make mention here of the fact that Canada, as well, is signatory to a broad range of international covenants. In most of these cases, when we have signed an international agreement or an international covenant in a social program area, that covenant has been ratified not only by the federal Parliament but by all of the provincial legislatures as well. I take as an example the 1964 ??international convention on full employment, which was ratified not only by the Canadian Parliament but by all the provincial legislatures.

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We think where a national shared-cost program is to be put in place and where that reflects or mirrors an international covenant which has been ratified by Canada, then that covenant should be clearly identified within the context of the national objective and that the shared-cost program should be made to be consistent with what we have done internationally. Canadian foreign policy states that we will be consistent domestically with stands that we take internationally. We think that should be written in.

Finally, we believe that any stated commitment for a national social program should be balanced and clarified by a commitment to monitor and to assess progress in meeting those clearly identified social needs, and that we should maintain a publicly available standardized database which reflects the status of those needs and that we should have a commitment to monitoring and to publicly reporting and evaluating the country's progress in realizing that national objective.

Now this may seem rather obvious, I suppose, but you may well be aware that there is a history in Canada of many social programs which are receiving funding from both federal and provincial levels where there is absolutely no accounting, either nationally or otherwise, of the progress that is being made on those programs: the results and the outcomes. There is no way that Canadians can judge right now, for example, the effectiveness of the \$87 million or so a year that is spent federally and then matched provincially for the rehabilitation of disabled persons. That is not right; so we are saying we need a way to ensure accountability.

Within the context of national objectives, there is an opportunity to tie together federal and provincial interests within a context that allows maximum provincial flexibility, a maximum range of co-operation, and yet can result in much-improved social programs in the future. We think if that is taken as a shared understanding, then some of the other terms that are indistinct in the accord can more easily be dealt with; terms such as "compatibility," for example. We do not have to argue about whether "compatibility" means not repugnant to, consistent with or whatever; we can

say "compatibility" can be determined by the degree to which provincial initiative clearly is working towards those defined national objectives and so, therefore, can compensation.

I think I have gone on longer than I intended. I thank you for your tolerance of that, but I am open to any questions or concerns that you might like to raise.

Mr. Chairman: Thank you very much, and not at all. I think you have done something that we have been searching for for some while, which has been how to come to grips with national objectives. We have entered into a number of discussions with different individuals and groups around the whole question of standards and objectives and how that all might come together. I think what you have put before us here is extremely useful and we really appreciate that. I think that is going to be of great help to us as we struggle through some of these different issues. We will begin the questioning with Mr. Breaugh.

Mr. Breaugh: You have done something that a number of groups have tried to do and I have personally struggled with. It seems to me in this document you are getting a little closer to something that would be useful. I do not think it would do anybody any good in this country if we changed the word from "objectives" to "standards" or anything like that.

It is hard, I guess, for many groups to kind of understand why somebody like me in particular does not want to play this game. But I think every one of us spends a whole lot of time in our constituency office dealing with somebody who is hurt, who is poor, who is injured or who is sick, and we play the game of trying to find out: "Which box does this one fit into? Which set of standards? Which criteria?"

I think all of us would tell the world that we have gone through situations where governments at many levels spent more money administering than they did in delivering a benefit. We have all been to a compensation board hearing where the workers' compensation fund in Ontario spent untold thousands of dollars to assess someone's injuries. The guy cannot walk and the board says, "But our expert advice is you don't fit the criteria, you don't meet the standards and you don't get the money." It is an aggravation to no end to find out that governments are willing to spend \$100,000 to assess their standards and will not give a guy a nickel.

We have all had it. I represent an industrial riding and it is common practice, for example, that when a worker is 45 or 50 and is injured on the job, he will take whatever box he fits in, whether it is the compensation board or a disability pension or whatever, and move back to the Maritimes or eastern Ontario where he could actually live on that kind of money. He could not continue to live in an urban, industrialized riding.

I think for many of us, if we are expressing, or if I am expressing a little frustration here, it is just that this is the game we play on a daily basis and it is not a nice game. I cannot justify why a woman who fell in her house does not get anything for her injury at her place of work and a worker who falls off a scaffold at a building site does qualify. I am really angry that all the programs we have set up for almost all these things result in something which, at the very best, leaves them just below the poverty line and probably means they cannot continue to reside.

Every time we get into this standards stuff--we have a thing in Ontario called the spouse-in-the-house rule now, which was designed essentially to



allow the other designated spouse, I guess you have to say these days, to be able to walk in the front door as opposed to crawling in the back window. The purpose of this exercise was to recognize a modern reality of how people live and cohabit.

The end result has been, in a number of cases, that though they qualified for X amount of dollars more per month--the government bureaucracies approved this--for many of them it meant they were disqualified for certain other things. They get 35 bucks in hand over here and lose all their medical benefits over there, and for some of them the medical benefits are the big dollar item in their lives.

What you have done, I think, is try to bump this into something which maybe makes a little bit more sense and may eventually get us to the point where it does not matter whether you are a man or a woman or whether you are injured in an industrial factory or in the kitchen; we are able to deliver a program that actually allows you to have something more than subsistence dollars in your pocket. Is that where you are headed with this thing as well?

Mr. Hunsley: I think the situation you describe is an excellent example of what we consider very likely to happen within the next 10 years, and that is we are going to recognize a requirement to rationalize a whole set of programs.

Sooner or later, there is going to be a challenge, whether it is a constitutional challenge or a challenge of provincial legislation or whatever, where someone is going to say it really is discriminatory that a person who suffers the same injury but at a different time of the day or in a slightly different context receives a completely different set of benefits.

I know there is a group of public officials working now at both the federal and provincial levels looking at the need to develop some sort of national disability insurance plan. They are going to look at workers' compensation programs, which vary from province to province, and at the Canada pension plan, which is the same everywhere. They are going to look at the taxation provisions, the deduction for disability that people can claim but would vary. It would be the same federal deduction no matter where they were in the country but would be a different provincial deduction, depending on where they were. They are going to look at a whole range of these programs and say, "How do we rationalize these?"

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In order to rationalize them, first, there is going to have to be a lot of flexibility available in the institutional instruments that we have to deal with that. Second, there has to be a concentration on the outcome you are desiring. What is the level of income replacement, if that is it, that people should be able to expect if they are disabled? Otherwise, they must try to deal with: "Did you get the disability during work hours or after work hours? Were you employed or not at the time? Should unemployment insurance cover disability insurance if you happen to be unemployed?" There are any number of questions like that.

Yes, I think in a sense we are trying to aim at the same thing. Let us define basic outcomes that we want and then deal with the roles of federal, provincial and municipal governments in delivering those issues. I do not mean

to separate funding from delivery in terms of jurisdiction by any means. There are clear jurisdictional issues which come in there.

Mr. Breagh: I will not bother you too much today, but one of my long-standing arguments is that the process we use to deliver benefits to people who need them is a process which is designed in such a way as to just exclude the clientele almost totally. We offer to people who may have more difficulty filling out forms than anybody else in our society an obligation to fill out a form.

This is something I do every day and I am amazed that forms designed by people who are bright, intelligent, straightforward folks confuse me. Imagine how they confuse somebody who also has a whole lot of back pain at the moment. They cannot find the building, they cannot find the program, they do not understand the language, they cannot fill out the form, and the end result usually is that they do not-qualify for this benefit anyway.

The frustration level among those of us who practise that kind of constituency work is very high. I do not have a whole lot of time to sit around and talk about standards, objectives or criteria. If somebody wants to talk to me about the legal right to challenge whether your provincial government, your municipal government or your federal government is treating you fairly as they ought to, I am on side with that, just as I am if you want to bump this system around so that the end result is that people get the assistance they require rather than an analysis of whether the program meets everybody's criteria.

To be truthful, too, I think a lot of us spend a lot of our time saying to community groups who come in, "What is it you want to do?" We have a working knowledge of what government programs fund those kinds of things and we message--I guess that is the nice word--the local group's desires and programs to fit the box that somebody else has designed for a delivery system. I would really rather get out of that business.

Miss Roberts: I hate to agree with my colleague, but he certainly has looked at a particular problem in a fairly practical way and has an understanding of the way the federal and provincial governments right now are dealing with cost-shared programs and he has some concern about how that can change and how it has changed just in the last little while. You have that background. There are just two fairly practical questions that I might put to you.

You have indicated on page 2 of your brief various things--four points, I believe--that you would like looked into to clarify national objectives. What vehicle are you going to use to get these four points or things like them dealt with, either by the Legislature or by the federal Parliament? Are you suggesting that there be a change to the Meech Lake accord or a change to the Constitution? How do we deal with that?

Mr. Weiler: We are concerned because we realize that, if one is to propose an amendment, one is talking about the changing of the present wording. What we are really trying to get at in this proposal is an interpretative statement, putting the particular statement that we have in the Meech Lake accord into a context that will allow for the progressive development of social programming.

Because of that, we are open to suggestions, but initially the view of the council was that if we could get at least public commitment of the

leaders, the first ministers in particular, to this understanding, to this being their understanding of a clause that they perhaps will sign or already have signed, that would be a good starting point. Hopefully, if there is a challenge in the courts, that kind of understanding would then be conveyed to the courts as a part of the evidence presented if some jurisdictional disputes in the area of shared-cost programming were to be presented in the future.

Miss Roberts: An interpretative statement of some type, maybe a statement in the House of Commons or somewhere that can be used by the courts somewhere down the road.

My second question with respect to that is, are you not concerned about the delineation of the term "national objectives" in that way, either through interpretative statements or in some way? At this time, it is going to put some limits on the use and the benefit of that term somewhere down the road with respect to shared-cost programs. This is what you would like to have today, but 10, 15 or 20 years from now, you may not want it to be that narrow or you may want it to be narrower.

Mr. Hunsley: I should clarify that. We would like to have the most formal level of ratification possible for this kind of understanding. A statement made in the House is one way, but we would be delighted if, in the accord, when the accord itself is signed, there were an asterisk alongside the words "national objectives" and a footnote that said, "As defined as follows" and this sort of definition were to be appended. We think that would be much better.

However, I think the answer to the second question is really that we do not think that this narrows the ability of federal and provincial governments in any way in the future. If we took the view that the words "national objectives" can mean whatever federal and provincial governments agree at any given time that they can mean--and I realize that is an exaggeration of what you are saying--then there would be no need for almost any document setting out relationships, because what you would say is just that relationships will be whatever we agree them to be in future.

In reality, we have the ability to deal with and amend legislation, the accord and the Constitution, as evidenced here, but for the foreseeable future, this definition, in our view, is an appropriate one. It has a wide degree of latitude for the roles of federal and provincial governments and it does not constrain either government. We do not think that it abridges either government's legitimate jurisdiction but it guides the development of programs and, maybe more important, it brings into the Constitution the individual Canadian, because this adds the element of the citizen. If there are going to be cost-shared programs in the future, they are going to be constitutionally defined. What is the right of the citizen in respect of those programs?

Mr. McGuinty: In my experience with the document thus far, I guess next to the phrase "distinct society," the one that has given the most problems is the phrase "national objectives." It seems to me that really opens up a can of worms for future interpretation.

A number of people to whom I have spoken have the good fortune not to be trained in law; therefore--and I do not say this in a disparaging sense--they can see into some very basic implications of the accord as presently worded. They raise a basic question and they put it this way: "The premise on which medicare is based is the assumption that every Canadian from Newfoundland to Victoria has the right as a person to a basic health and decency standard of



medical care. In a civilized community, we have an obligation to respect that right."

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Is it conceivable that the federal government's power to extend a future basic necessity--the one I think of is possibly day care--which is considered to be, as society has evolved, a right and a basic need for the family, will be emasculated by virtue of the right of provinces to interpret national objectives to perhaps use the funds so allocated for highways? Is that the crux of the problem you are focusing on, sir?

Mr. Hunsley: I think it is, with one small adjustment. It is not necessarily the federal government's power to extend the right to an individual, in a context that is clearly a provincial jurisdiction, which is at issue; it is the power of the federal and provincial governments together to extend that right. That is what we are concerned may well be undermined by a vague, indistinct idea about what national objectives really are all about.

Mr. Harris: I will just ask one thing. At the end of your brief you state that nongovernmental participation should also be essential in assessing the efforts towards the achievement of national objectives. When we are talking about federal-provincial spending power, I would like to take it a little further. I am not a lawyer and I want to understand where you see this process is coming from. Presumably, if there is a federal-provincial program, and it is cost-shared or whatever it is, we are going to turn to this document if there is a problem. If there is no problem, nobody is going to look at the document, presumably.

Is the problem we are talking about going to be the federal government saying to a province, "You are not delivering"? Is it going to be initiated in that way and somebody is going to have to interpret that, or is the province going to initiate it? That is my understanding of where we are coming from. Is there a vehicle now, and do you think there is a need for a vehicle, for an individual to challenge what is happening in a federal-provincial cost-sharing program?

Mr. Hunsley: There is a vehicle for individuals--and I do not think this is the right answer--to challenge federal legislation. There is not necessarily a vehicle for individuals to challenge provincial legislation when that is related to rights and issues.

But I want to come back to the beginning of your question, or your statement in fact. I do not think this issue is here to deal with the exception. I do not think this definition is here to deal with the problem when it arises as a disagreement. I think it is more important to deal with the everyday development of programs.

What the definition of national objectives, or the understanding of that clause, will do is determine what the process is to review existing programs and to develop new ones. One of the problems that has been floating around in the issue of child care, for example, is that people do not really know at this stage whether they are dealing with pre-Meech-Lake understandings or whether they are trying to develop child care on the assumption that the accord is in place or not, and the difficulty of that is, depending on how you interpret it, different people are involved.

If you look at who gets involved in the bureaucracy, then a standard way

for a piece of specific legislation like child care to be developed is for people in the health and welfare departments and the social services departments across the country to get together and talk about what is needed, to come to some sort of consensus about that, and then for all to go back and have that rise through their own systems and be ratified and so on.

In the post-Meech-Lake process, there are different actors involved. The people who negotiate these things are now the federal-provincial relations department or intergovernmental affairs department, if you like, of the various governments and often the finance departments, because the major concerns are, "What are our jurisdictional rights here and what happens if we opt out?" rather than the context in which one is working. So there is a bit of that as an ongoing problem in regard to how these programs are developed.

It is also a concern on our part, being a nongovernment organization, that nongovernment organizations have access to the process of policy development in the future. We are a bit concerned about that in relation to the accord.

For example, the Canada assistance plan, which has been used as an example in this cost-sharing area, was developed during the 1960s. It was developed based on a model put together by a volunteer task force of our own organization, chaired by Dr. Fred MacKinnon, who happened to be a vice-president of our council and also happened to be a deputy minister in a provincial government at the time.

The policy and the program issues which were worked on were developed, first, outside of government, outside of the federal-provincial negotiating arena, by people whose main concern was program. Then they were subjected — later on to the federal-provincial process which brought in the concerns and considerations of financing and so on that go with that.

There, again, we think that depending on the definition of objectives and what is involved in that, the people who are involved in deciding the kinds of programs and rights and so on really will change. We would like to be sure that there is a role for that community which is involved in these areas to have something to say about it.

Mr. Chairman: On behalf of the committee, I would like to thank you again for coming today. I think the points you have brought forth really have been most helpful.

The point just at the end with respect to the nongovernmental organizations is one we really have to pay attention to. I think we have been aware of that not only in looking specifically at the development of the kinds of new shared-cost programs we are going to need but also in the development of constitutional amendments, where perhaps some issues and some matters might have been less of a problem had we had more input from nongovernmental organizations as well as individuals.

As you can appreciate, in a committee such as ours there are a number of areas where we get into, especially in this subject matter, some fairly ethereal discussion. So it really is, I stress again, helpful to have—in this case, your own organization has gone away and said: "Well, OK. If this goes ahead, how might that work? How would we approach it?"

You have stressed the fact that when we are talking about a shared-cost program, we are talking about the federal and provincial governments and the

nature of that co-operation and you have asked whether we can find somehow, whether it is by inserting in the agreement an asterisk or whatever the process, a shared understanding of what we are going to mean by this.

I would just like to thank you very much for the submission. We have the other documents and we will read them with interest as well.

Mr. Hunsley: Thank you very much.

Mr. Chairman: We will now take a constitutional break and adjourn until 2 o'clock.

The committee recessed at 12:49 p.m.



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SELECT COMMITTEE ON CONSTITUTIONAL REFORM

1987 CONSTITUTIONAL ACCORD

THURSDAY, MARCH 24, 1988

Afternoon Sitting

Draft Transcript

SELECT COMMITTEE ON CONSTITUTIONAL REFORM

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Villeneuve, Noble (Stormont, Dundas and Glengarry PC) for Mr. Eves

Clerk: Deller, Deborah

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Bedford, David, Research Officer, Legislative Research Service

Witnesses:

De la Fédération des caisses populaires de l'Ontario Inc.:

Gervais, Roland, membre, conseil d'administration

Laflèche, Jean-Guy, directeur technique

From the Quebec Federation of Home and School Associations:

Koeppé, Helen, President

Potter, Dr. Calvin, Co-Chairman, Rights Committee

Wiener, Rod, Co-Chairman, Rights Committee

From the Women Teachers' Association of Ottawa:

Castle, Janet, President

Douglas, Nancy

## AFTERNOON SITTING

The committee resumed at 2:07 p.m. in the Capital Hall of the Ottawa Congress Centre.

M. le Président: Je souhaite la bienvenue à tout le monde pour notre séance cet après-midi. Nous avons d'abord les représentants de la Fédération des caisses populaires de l'Ontario: M. Roland Gervais, membre du conseil d'administration, et M. Jean-Guy Laflèche, directeur technique de la Fédération. Nous avons devant nous la lettre de votre président, M. Jean-B. Alie. Pardon, c'est seulement moi qui ai la lettre. Je vais juste expliquer aux autres membres que M. Alie est à Toronto avec le trésorier de l'Ontario (M. Nixon) et qu'il était censé être ici, mais il n'a pas pu. Nous le comprenons très bien.

M. Villeneuve: Pour de bonnes raisons, Monsieur le Président.

M. le Président: Absolument, oui. Ces jours-ci, M. Nixon reçoit beaucoup de visiteurs pour parler d'autres questions.

Nous avons la présentation devant nous et je vais simplement vous passer la parole. Après la présentation, nous allons vous poser des questions.

### FEDERATION DES CAISSES POPULAIRES DE L'ONTARIO INC.

M. Gervais: Je vous remercie beaucoup de nous donner la chance de vous présenter notre mémoire aujourd'hui.

Monsieur le Président, mesdames et messieurs, la question que nous voulons discuter présentement est celle de permettre et de promouvoir le développement de la communauté francophone de l'Ontario par la reconnaissance officielle des institutions qui lui appartiennent. Les caisses populaires, à cause de leur philosophie coopérative, forment un regroupement totalement franco-ontarien qui existe depuis le début du XX<sup>e</sup> siècle. Notre mouvement n'a jamais perdu son identité francophone au fil des ans, même qu'il l'a plutôt accentuée.

Notre argumentation juridique est la même que celle que vous a présentée l'Association canadienne-française de l'Ontario en février et dont nous appuyons totalement le point de vue exprimé dans son mémoire «les Hors-la-loi». Nous avons cependant cru bon vous exposer brièvement, en complément de ce mémoire, en quoi non seulement la mission de la Fédération des caisses populaires de l'Ontario mais aussi la survie de notre mouvement coopératif sont directement menacées par l'accord du lac Meech.

Il y a, au-delà de la culture et de la langue, des traits économiques et sociaux particuliers à la francophonie ontarienne. Les caisses populaires en sont peut-être un des meilleurs exemples. Elles ont été mises sur pied par des francophones pour des francophones afin de favoriser le développement socio-économique de leur communauté. Depuis la fondation de la première caisse en 1912, elles se sont développées pour former aujourd'hui un important regroupement financier à caractère distinct.

Les caisses sont installées dans presque toutes les communautés francophones de la province et elles totalisent des actifs supérieurs à 1,1 milliard de dollars. Elles jouent un rôle unique dans la présence et la promotion de la culture francophone et représentent beaucoup plus que les intérêts financiers. A ce titre, les caisses populaires doivent avoir les



moyens non seulement de survivre mais aussi de se développer. Le nouvel accord constitutionnel est, parmi ces moyens, celui qui a probablement le plus d'impact à long terme sur leur avenir.

L'entente constitutionnelle de juin 1987 menace la croissance et la stabilité continues des caisses, étant donné le manque de garanties pour les institutions francophones. Elle menace directement l'épanouissement économique et socioculturel des Franco-Ontariens. Puisqu'elle ne garantit que le statu quo en matière de droit linguistique et puisque ce statu quo protège bien imparfaitement le caractère distinct de la communauté francophone au sein de la structure sociale et économique de l'Ontario, elle doit être révisée. Cette révision doit assurer des droits collectifs aux Canadiens d'expression française hors Québec. Elle doit inclure la nécessité pour les gouvernements de promouvoir la reconnaissance de ces droits. En d'autres mots, la constitution doit dire aux Canadiens qu'on peut avoir en Ontario autre chose qu'un milieu fait sur mesure pour anglophones seulement.

Comme toute coopérative d'épargne et de crédit, les caisses populaires ont pour but de développer un réseau de services financiers en conformité avec les principes coopératifs. Les caisses populaires affiliées à la Fédération visent cependant quelque chose de plus que d'offrir ces seuls services financiers. Elles se sont donné une mission spécifique, qui est de contribuer à l'épanouissement économique et socioculturel de la communauté franco-ontarienne. Voici le texte de cette mission, et je cite:

«La Fédération des caisses populaires de l'Ontario inc., en collaboration avec ses caisses populaires affiliées, a pour mission de développer un réseau de services financiers en conformité avec les principes coopératifs, afin de contribuer à l'épanouissement économique et socioculturel des Franco-Ontariens.»

La relation étroite qui s'est développée entre les caisses populaires et les francophones de l'Ontario témoigne de son importance pour la communauté. Les caisses desservent près de la moitié des Franco-Ontariens et Franco-Ontariennes. Elles sont parmi les plus importantes institutions financières à leur service, et la seule dans plusieurs localités.

De nombreuses petites communautés francophones n'auraient même pas d'institution financière à leur disposition sans les caisses. En effet, les caisses desservent une vingtaine de localités où elles sont les seules institutions financières. Aucune banque ou compagnie de fiducie n'installeraient une succursale en ces endroits, à cause du potentiel de clientèle peu élevé. D'ailleurs, la fermeture de succursales d'autres institutions financières a été à l'origine de la fondation de plusieurs caisses, dont la situation est très florissante aujourd'hui. Pour les caisses, la rentabilité demeure toujours un objectif à viser, mais ce n'est pas tout. Il existe toute une dimension sociale qui dépasse de beaucoup les critères de gestion des entreprises capitalistes.

Avec ses caisses membres, la Fédération contribue activement à la vie culturelle de la communauté franco-ontarienne en y versant plus de 200 000 \$ par année, soit près du tiers du budget alloué par l'Office des affaires francophones au Fonds de soutien à la communauté. Ce sont les caisses qui ont créé, par exemple, un centre communautaire francophone dans la région du Grand-Nord, une coopérative d'habitation à Hanmer, une résidence pour personnes âgées dans la région de Sudbury. Ce sont toujours ces caisses qui investissent des ressources humaines et financières dans la jeunesse franco-ontarienne en leur permettant de faire valoir leurs talents culturels

ou en mettant sur pied des mécanismes d'éducation économique et coopérative. Des exemples de ce genre, nous en avons à profusion.

L'identité francophone du mouvement, de pair avec l'implication communautaire importante des caisses et un membership stable, a été primordial pour la croissance du mouvement des caisses populaires en Ontario. Et elle le sera encore plus à l'avenir, alors que l'innovation basée sur l'expérience vécue au sein des communautés locales sera le meilleur gage du développement économique.

Ce court exposé de ce que sont les caisses populaires de l'Ontario m'amène au coeur de ma présentation, qui repose sur deux points fondamentaux. Nous percevons l'accord constitutionnel, tel que rédigé présentement, comme une réponse inadéquate aux besoins des Canadiens français. De plus, il est primordial que les communautés francophones hors Québec jouissent des garanties constitutionnelles nécessaires à la construction d'un cadre d'action où leurs membres pourront travailler, recevoir des services et se développer dans leur langue et leur culture propres.

Rien ne sert de s'étendre devant ce comité sur les sombres perspectives du français hors Québec. Les nombres faibles et l'éparpillement des francophones les rendent extrêmement vulnérables à l'assimilation. Les politiques des gouvernements font qu'ils doivent toujours se battre pour les droits qui leur sont accordés comme des privilèges.

La situation des francophones est d'autant plus précaire que le Canada est à libéraliser ses échanges avec les Etats-Unis, ce qui rendra la communauté francophone encore plus perméable aux influences des autres. L'Ontario sera touché de plein fouet par le libre-échange. Son économie sera, dit-on, profondément modifiée et, avec elle, le monde du travail ontarien, les entreprises et les institutions. Disparaîtront vraisemblablement, à plus ou moins long terme, nombre d'activités reliées à l'exploitation directe des ressources du milieu local, activités qui avaient permis aux concentrations de francophones de l'est et du nord de se maintenir jusqu'à aujourd'hui. La migration vers Toronto aidant, c'est tout un contexte favorable à l'épanouissement de la communauté francophone qui disparaîtra.

Les efforts que devront déployer les caisses durant les années qui viennent exigeront de faire plus encore que par le passé. Si nous voulons nous insérer collectivement dans les courants modernes de l'économie, sortir du sous-développement les localités francophones particulièrement touchées par les changements technologiques récents et assurer la participation de notre jeunesse, il nous faut une reconnaissance officielle de la contribution des francophones à la société canadienne. Les garanties constitutionnelles dont bénéficie aujourd'hui la communauté francophone sont nettement insuffisantes. Malgré des efforts marqués dans les secteurs de l'éducation et de la justice, le gouvernement de l'Ontario n'a pas su légiférer jusqu'ici de façon à pallier les insuffisances de la constitution. Même qu'au contraire, en ce qui a trait aux coopératives d'épargne et de crédit, la récente législation provinciale va jusqu'à entraver le développement des institutions francophones et des communautés qui les soutiennent.

En effet, les dernières mesures du gouvernement de l'Ontario enlèvent aux caisses populaires les droits qu'elles avaient acquis antérieurement avec la Loi de 1976 sur les caisses populaires et les «credit unions». Nous avions alors été reconnus officiellement comme des entités distinctes et obtenu un traitement en conséquence. Je me permets de vous citer un extrait du paragraphe 24(3) de cette loi de 1976: «La caisse tient ou fait tenir, en français ou en anglais seulement, les documents et registres suivants...».



Cette loi nous autorisait donc à faire affaires dans notre langue. Malheureusement, douze ans plus tard, les caisses ne peuvent toujours pas s'adresser au gouvernement en français. Les hauts fonctionnaires sont tous des anglophones qui ne comprennent ni ne lisent aucun mot de français. Pis encore, lorsque nous correspondons avec le ministère, des délais supplémentaires s'y ajoutent, puisque nos documents doivent être traduits par le gouvernement. Souvent ces traductions ne respectent pas le sens de nos propos.

Afin de régler les difficultés financières que connaissent un certain nombre de caisses et de «credit unions» au sein du mouvement coopératif de l'épargne et du crédit populaire, le ministère des Institutions financières annonçait en 1986 son programme de changement. L'action du gouvernement contenait des mesures de stabilisation qui allaient toucher indistinctement les caisses populaires et les «credit unions», malgré la reconnaissance du rôle particulier des premières dans la Loi de 1976 sur les caisses populaires et les «credit unions». Ces mesures, qui enlèvent aux fédérations de caisses populaires leur propre fonds de stabilisation, représentent une perte importante d'autonomie pour les institutions francophones. Aussi, en réduisant sensiblement les fonds disponibles aux sociétaires et à la communauté francophone en général, elles diminuent d'autant le pouvoir financier de cette dernière et ses capacités de se prendre en main économiquement et socialement.

Nous sommes d'avis que la stabilisation du mouvement des caisses populaires ontariennes devraient être confiée à des institutions francophones. Présentement, des décisions majeures sont prises par des gens qui considèrent les caisses et les «credit unions» totalement pareilles et qui n'ont aucune implication dans la communauté francophone. Seul le point de vue affaires ou financier est analysé, et on se fout complètement du rôle social des caisses dans la francophonie.

La situation déplorable que nous vivons présentement avec le gouvernement démontre à quel point nous sommes vulnérables aux changements du parti au pouvoir. Même avec la Loi 8 sur les services en français du gouvernement actuel, les caisses populaires ontariennes ont subi un important recul quant à la reconnaissance de leur existence et de leur statut particulier.

De plus, rien dans la constitution actuelle ne permet aux francophones d'exiger que le rôle unique et les méthodes de gestion particulières aux caisses populaires soient reconnus. Rien ne leur permet de s'ériger contre une politique du ministère des Institutions financières qui leur est nettement préjudiciable. Et l'accord du lac Meech, qui ne reconnaît que des droits individuels de parler en français, qui n'exige en rien la promotion du fait français hors du Québec, n'offrira aucune amélioration en ce sens. Cette situation devient donc très inquiétante pour l'avenir de notre mouvement coopératif et francophone.

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Pour continuer à jouer leur rôle unique en Ontario français, pour jouir d'une certaine stabilité et continuer à prendre de l'expansion, les caisses populaires de l'Ontario ont besoin d'une reconnaissance officielle de leur caractère distinct dans la loi qui les régit. Elles ont besoin de la création d'un fonds de stabilisation séparé pour le mouvement francophone, étant donné les différences de philosophie, de gestion et de stabilité financière entre les mouvements francophone et anglophone. Elles ont besoin d'une gestion séparée du fonds de stabilisation francophone, ce qui leur permettra de tirer parti de leur vigueur.



Plus encore, les caisses populaires ont besoin de ne plus être soumises au bon vouloir des gouvernements en place et qui choisissent souvent de répondre à court terme aux fluctuations de l'économie provinciale. Elles ont besoin d'une pleine reconnaissance du caractère distinct de la communauté francophone et de son droit à l'usage de sa langue dans la province. Elles ont besoin du bilinguisme officiel, sans quoi elles n'auront aucune garantie de pouvoir maintenir leur place de choix dans le développement économique, social et culturel de la communauté franco-ontarienne. Et elles ont besoin d'une entente constitutionnelle qui donne à la communauté francophone hors Québec le droit d'exister et de s'épanouir.

De notre point de vue, la question que l'on doit se poser, à la lecture du texte de l'accord du lac Meech, est fort simple: Comment les Franco-Ontariens pourraient-ils assurer leur avenir socioculturel, sans le fonder sur une base économique forte? Et comment, dans un environnement où la rentabilité financière est l'unique critère d'évaluation des entreprises, construire cette base économique sans garanties constitutionnelles suffisantes? De plus, ce critère de rentabilité devrait s'inspirer de nos fondements culturels et refléter les caractéristiques de la communauté francophone; en d'autres mots, correspondre à notre mission.

La réponse est aussi fort simple. L'incompréhension manifeste des pouvoirs publics face aux caisses populaires et à leur mission auprès des francophones nous rappelle l'importance d'une constitution qui leur reconnaisse le droit de construire un pays à leur image.

En conclusion, nous espérons que notre message aux membres de ce comité a été assez clair. L'avenir d'un Ontario français passe par l'action collective au sein d'une communauté qui a misé sur la solidarité plutôt que sur l'individualisme de ses membres. Il dépend d'institutions suffisamment souples et dans lesquelles les citoyens ne sont pas les victimes d'organisations qui leur sont culturellement étrangères. Or, ces institutions ne joueront le rôle qui leur revient qu'à la faveur de garanties constitutionnelles fortes pour les communautés francophones à l'échelle de tout le Canada.

Ce n'est pas par hasard si les caisses populaires représentent aujourd'hui une force économique de plus d'un milliard de dollars. Il s'agit d'une réussite collective qui prouve que notre système fonctionne très bien. Pourquoi le gouvernement essaie-t-il de nous en imposer un autre présentement? Nous disposons actuellement de plus de 25 millions de dollars en réserve. Cette somme appartient totalement aux francophones, membres des caisses. Mieux encore, l'existence des caisses crée présentement plus de 600 emplois pour les francophones, ce qui s'élève à environ 40 millions de dollars en salaires et dépenses diverses. Cela entraîne des retombées économiques de l'ordre de 140 millions de dollars dans nos diverses communautés.

La dimension socio-économique de notre mouvement est non seulement capitale mais aussi essentielle à la culture franco-ontarienne. Il faut donc nous donner les outils pour continuer notre action. Les caisses populaires en particulier ont besoin, pour contribuer à l'avenir socioculturel des Franco-Ontariens, d'une constitution qui reconnaisse le rôle joué par les deux communautés de langue officielle dans la construction du Canada de demain.

Merci, Monsieur le Président.

M. le Président: Merci beaucoup. Vous nous avez donné un très bon exemple d'une institution francophone et d'une institution financière mais qui

est vraiment impliquée dans la vie socioculturelle de la francophonie de l'Ontario. C'est donc très clair comme exemple quand on parle de garanties de droits linguistiques et de droits culturels.

On passe aux questions. D'abord M. Villeneuve.

M. Villeneuve: Monsieur Gervais et Monsieur Laflèche, merci de votre présentation. Je voudrais toucher à deux domaines. Pour toucher au premier domaine, qui a trait à l'accord du lac Meech, la reconnaissance du fait français, je crois que le mot est «préserver» tout simplement. Je crois que vous aimeriez peut-être avoir, comme bon nombre de gens l'ont mentionné, non seulement la préservation et la protection mais le fait de promouvoir la langue minoritaire en Ontario. Le comité va probablement faire face à cette situation-là.

La deuxième situation à laquelle il fait face est plutôt une situation provinciale. Quand on fait face à une situation, vous êtes en réalité desservis de la même façon...

M. le Président: Excusez-moi, Monsieur Villeneuve. Le système d'interprétation simultanée ne fonctionne pas. Cela marche? Is that OK now? Bon, alors je m'excuse. Continuez.

M. Villeneuve: Vous êtes desservis de la même façon que les «credit unions» en Ontario, et puis moi-même et mon collègue ici, M. Harris de North Bay, avons abordé à certaines reprises le problème auquel M. Alie fait face actuellement avec le trésorier de la province. Mais premièrement, du côté de l'entente du lac Meech, pourriez-vous nous donner vos impressions, vos idées sur la façon dont la langue minoritaire en Ontario devrait être abordée dans l'accord?

M. Gervais: Le problème que nous avons vient peut-être du fait qu'on dénote un territoire géographique, soit le Québec, comme étant une société distincte. En fait, la façon dont nous le voyons, nous autres, c'est que ce sont les Canadiens français, l'un des deux groupes fondateurs, qui ont, d'après nous, droit à des services égaux et équitables. Ce n'est pas le territoire géographique qui soit important à la question, c'est la communauté francophone, qui n'est pas traitée de façon égale.

M. Villeneuve: Nous avons eu une présentation très passionnée ce matin de la part des anglophones du Québec, qui font face un peu à la même situation que la francophonie hors Québec, et je crois que nous comprenons un peu les problèmes auxquels font face les minorités, où qu'elles soient. Je crois que vous touchez au noyau du problème.

Deuxièmement, vous avez, avec le trésorier de l'Ontario, des négociations qui ne touchent pas directement à l'entente du lac Meech; c'est probablement une situation indirecte, si vous voulez, mais vous voulez une reconnaissance spéciale. Vous avez déjà été une entreprise économique très viable, et dans le moment vous êtes obligés de négocier pour avoir une entente spéciale, dans la mesure que vous êtes une entreprise spéciale, telle que dépeinte ici. Pourriez-vous donner un peu plus de détails là-dessus?

M. Gervais: Oui. Je suis d'accord que c'est peut-être une question indirecte à l'accord du lac Meech. Cependant, ça revient à ce que nous disions dans notre mémoire, à savoir qu'on ne nous garantit même pas le statu quo. On a vu ça quand le gouvernement a sorti son programme de changement, par lequel ils nous ont enlevé le fonds de stabilisation des caisses qu'on avait

auparavant. Maintenant, on fait juste partie du «melting pot» de tous les autres groupes, les «credit unions» et autres. Cela fait qu'on ne voit dans le présent accord aucune garantie même de garder le statu quo.

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M. Villeneuve: Cela se concrétise dans la mesure que vous êtes présents principalement en Ontario, dans les milieux où nous avons un nombre assez élevé d'Ontariens d'expression française. Je crois que ce n'est pas un accident, c'est fait tout simplement par le fait que les caisses populaires ont été un mouvement francophone en Ontario, et là où vous êtes situés, je crois que vous vivez cette situation-là.

M. Gervais: Je ne suis pas sûr si je comprends le sens de votre question. Je ne comprends pas.

M. Villeneuve: C'est la raison pour laquelle vous voulez être distingués, séparés des «credit unions»: Vous êtes un mouvement francophone établi dans les régions francophones de la province.

M. Gervais: C'est ça, puisque, fondamentalement, d'après nous, nous ne pourrions jamais contrôler notre destin si nous ne pouvons pas contrôler les cordons de la bourse.

M. Villeneuve: Alors, vous voulez deux choses. Vous voulez votre autonomie au niveau provincial, et vous voulez la reconnaissance du fait français dans l'accord du lac Meech pour promouvoir le fait français, si je vous entends bien.

M. Gervais: Justement.

M. Villeneuve: Merci.

M. Allen: J'apprécie beaucoup un mémoire qui traite de l'impact, sur une seule institution, du lac Meech et des conséquences du lac Meech qu'on prévoit. Je suis d'accord qu'il faut vous donner les outils pour continuer votre action, et peut-être que les outils principaux sont la langue française et le statut de la langue en Ontario et aussi partout dans notre pays.

Mais pour ce qui est des difficultés à résoudre ce problème terminologique difficile à l'égard de ce que comprennent les mots «préserver», «protéger», «promouvoir», etc., n'est-il pas possible que ce soit le moment maintenant de pousser le gouvernement de l'Ontario fortement en ce qui concerne la question du statut officiel de la langue française?

M. Gervais: Oui.

M. Allen: Oui? Ce serait peut-être de cette manière-là qu'il serait possible de résoudre la plupart de vos difficultés avec l'accord du lac Meech.

M. Gervais: Oui, c'est ça, puisque ce qui nous rend différents des «credit unions», ce sont en effet notre langue et puis notre culture. Le rôle que nous nous sommes donné dans notre mission, qui est d'améliorer la situation des Franco-Ontariens, serait d'ordre socioculturel et autre.

M. Allen: Oui. On a exprimé l'opinion que, dans la politique de certaines provinces - par exemple, la Colombie britannique - la préservation de la langue française est un grand pas en avant, et il serait difficile d'aller au delà de cette position partout dans le pays.



Mais je suis un peu dérangé par vos commentaires à la page huit à l'égard de vos relations avec le gouvernement de l'Ontario. Vos relations avec le gouvernement ne sont-elles pas comprises sous le projet de loi 8 concernant les services? Ou le problème est-il plutôt la qualité des services?

M. Gervais: S'ils vont être réglés par suite de la Loi 8, ils ne le sont pas encore. Si vous parlez de la communication, dans le deuxième ou le troisième paragraphe, il y a encore un problème de communication à cause du fait, comme on le dit, que la majorité des hauts fonctionnaires, sinon tous, sont anglophones et ne parlent ni comprennent le français.

M. Laflèche: Si vous permettez de compléter la réponse, le problème se situe à deux niveaux. D'une part, il y a la question des communications avec le gouvernement, les représentants du gouvernement, à cause du fait que les hauts fonctionnaires ne sont pas bilingues; donc, il y a certains problèmes de communication. Il y a également la question de la traduction de documents; il y a des délais et tout ça. D'autre part, le gouvernement nous avait accordé un statut particulier par la reconnaissance de la Fédération des caisses populaires de l'Ontario en ce qui concerne l'administration des fonds de stabilisation.

Alors, avec la question du programme de changement que le ministère a présenté, et pour solutionner les problèmes du mouvement des coopératives de crédit, le gouvernement a reculé un peu sur ces positions et traite le problème d'une façon globale. Donc, c'est un peu à ce niveau-là que se situe notre problème. Vu que le gouvernement enlève le statut particulier aux caisses populaires, on considère cela un peu comme un recul.

M. Allen: Oui. Merci beaucoup.

M. Morin: J'ai seulement une question complémentaire. Une de vos déclarations, à la page huit, me bouleverse, en ce sens que vous dites ceci: «Souvent ces traductions ne respectent pas le sens de nos propos». Laissez-moi vous assurer, en tant que représentant du parti provincial, que ça n'a rien à voir avec l'accord du lac Meech. Si vous avez des difficultés comme celles-là, difficultés de communication, de compréhension, nous avons un ministre délégué aux Affaires francophones (M. Grandmaitre), dont la seule responsabilité est de s'assurer que ces choses-là ne se produisent pas. Alors, ce que je vous recommande fortement, c'est d'établir des liens de communication avec le ministre et de lui faire connaître vos propos. Je peux vous assurer que des problèmes comme ceux-là seront réglés de la façon la plus efficace que vous puissiez espérer.

M. Gervais: Merci beaucoup.

M. Morin: Alors, c'est la seule chose que je voulais vous poser.

J'ai de la difficulté un peu à comprendre... et je m'excuse, Monsieur le Président, c'était une complémentaire, et là ce n'est plus une complémentaire. J'espère que je n'enlève pas le droit à mes collègues.

M. le Président: On est très libéral cet après-midi.

M. Morin: Je ne vois pas tout à fait le lien qu'il peut y avoir entre le problème auquel vous faites face, sur lequel je suis très renseigné, très informé, et l'accord du lac Meech.

M. Laflèche: Ce que nous disons, c'est que sans une garantie - en d'autres mots, le bilinguisme officiel - on n'a aucune garantie d'être capable même de garder le statu quo.

M. Morin: D'accord. Alors, ce que vous voulez dire tout simplement, c'est que Québec a plus d'ampleur...

M. Laflèche: C'est ça.

M. Morin: ...que les Canadiens français, les Canadiens d'expression française hors du Québec, peuvent avoir? Est-ce que c'est ça?

M. Gervais: Tel qu'écrit, ça pourrait être interprété de cette façon-là, oui.

M. Morin: Alors, quelle est la façon dont vous aimeriez qu'on puisse remédier au problème, que l'entente du lac Meech puisse régler le problème? Pas du côté financier, ça n'a rien à voir avec l'accord du lac Meech; je parle de la question de la francophonie.

M. Gervais: Je ne suis certainement pas un expert dans le domaine, puis j'imagine qu'il serait nécessaire que les juristes s'impliquent dans le processus à un certain point. Mais il me semble qu'il faudrait l'écrire de telle façon que ça faciliterait la tâche au gouvernement provincial de nous offrir le bilinguisme au niveau de la province.

M. Morin: En Ontario? C'est ça, le but de votre présentation?

M. Gervais: Oui.

M. Morin: Merci, Monsieur le Président.

M. le Président: Il serait peut-être intéressant pour vous de voir la présentation que l'Association des juristes d'expression française de l'Ontario a faite cette semaine, puisqu'ils nous ont présenté le brouillon d'un article qui protégerait les minorités. Ils ont parlé plus longuement de la question des droits collectifs que de celle des droits individuels.

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C'est intéressant: Vous avez ici, dans les caisses populaires, peut-être un des meilleurs exemples d'une institution francophone au Canada qui est, naturellement, une institution financière mais, en même temps, très importante au point de vue de la vie sociale et de l'épanouissement de la société francophone. Sans doute qu'à l'intérieur du ministère des Institutions financières, ces gens-là ne s'occupent normalement pas d'institutions d'ordre social ou culturel. Je pense que M. Morin a raison de dire que c'est surtout là où le ministre délégué aux Affaires francophones et les gens qui travaillent dans son ministère ont vraiment la tâche d'expliquer clairement, ou au moins d'essayer d'expliquer certains aspects de ces problèmes. Mais on peut voir en même temps les raisons pour lesquelles vous cherchez quand même un statut particulier ou un changement dans la constitution pour vous assurer que vos droits dans ces domaines seront vraiment protégés. Cela nous donne un bon exemple en ce sens.

M. Gervais: Oui, Monsieur le Président, c'est justement ce qu'on essayait de vous présenter.

M. le Président: Alors, nous allons parler avec notre collègue M. Nixon.

M. Gervais: Merci.

M. le Président: Alors, je vous...

[Rires]

M. le Président: On rit?

M. Villeneuve: Cela fait longtemps qu'on n'a pas ri.

M. le Président: Ah oui! Alors, nous vous remercions infiniment pour votre présentation et aussi pour la lettre de M. Alie et le document de l'Association canadienne-française de l'Ontario. Je pense que ça nous donne, avec les autres présentations des associations francophones de la province, des idées très claires sur la question de l'accord du lac Meech.

M. Gervais: C'est nous qui vous remercions de nous avoir donné la chance de vous parler.

M. le Président: Merci beaucoup, bonne chance.

I would like now to call upon the representatives of the Quebec Federation of Home and School Associations--the president, Helen Koeppe, co-chairman of the rights committee, Calvin Potter, and the other co-chairman of the rights committee, Rod Wiener. Would you be good enough to come forward? We have before us your submission. I guess we have two documents.

Mrs. Koeppe: Yes. We sent in a brief ahead of time, plus you have copies of our comments, in beige.

Mr. Chairman: First of all, we want to welcome you here this afternoon. If you would like to simply go ahead and make your presentation, then we will follow up with questions afterwards.

#### QUEBEC FEDERATION OF HOME AND SCHOOL ASSOCIATIONS

Mrs. Koeppe: Thank you, Mr. Chairman. As Quebeckers, we appreciate this opportunity to address the legislators of a sister province, particularly of a province where educational services flow from what originally was our common legislative source: the Common Schools Act of 1841 of the province of Canada.

When we were preparing our brief, QFHSA adopted an assumption which we since have had to question. We assumed the first ministers had signed the Meech Lake accord as a patriotic duty, under the mistaken assumption that there was a uniformity of minimum minority official language educational rights in Canada.

That assumption was justified by a remark made by Premier David Peterson in a letter to us dated August 7, 1987, "This expresses the conviction of first ministers that Quebec's distinctiveness can be promoted without taking anything away from uniform protection of linguistic minorities across the country."



At the Senate hearing of our brief, it was gently suggested to us that possibly the Quebec federation was mistaken in its assumption. What if all the first ministers knew that section 59 of the Constitution blocked uniformity of minority official language educational rights in Canada, but they were concerned not about justice to minorities, but rather about mounting a coup d'état whereby power and control were transferred from the federal government, not to the provinces per se but to the provincial premiers themselves?

We could not refute the suggestion. But if we were mistaken, as indicated, then the first ministers, in their stark pursuit of self-interest, had abandoned the balancing role in which they had been cast by the Fathers of Confederation in regard to the fundamental compromise of Confederation: the protection of education and language rights of minorities.

What if the questioner of the Senate was right? What if in Canada the motivation of patriotism and of belief in justice has atrophied to the point that it is no longer a balancing force in regard to rights? It was recognized at the time of the Confederation debates that in the absence of patriotic motivation, of a national vision of what is essential for the nation, the self-interest of other provinces posed an immediate threat for the minority in Quebec.

Both jurisdictions in the then province of Canada had a Council of Public Instruction. But in what is now Quebec, the full council met only once between 1859 and 1885. In reality, the Protestant minority in Quebec enjoyed virtual autonomy, although subject in law to the council; whereas in Ontario the Catholic minority was subject to the constant surveillance of Egerton Ryerson as the superintendent of the council. Although the school systems in the two jurisdictions of the province of Canada had originated from common legislation, the Common Schools Act of 1841, the uniform legislation was soon replaced by separate laws, which developed the educational systems in Quebec and Ontario along separate but parallel lines.

John Rose's remarks in the Confederation debates reflected a setting wherein the educational systems in Upper Canada and Lower Canada almost mirrored each other. In Upper Canada there were nonsectarian national schools for the majority and Catholic schools for the religious minority. In Lower Canada, there were Catholic sectarian schools for the French and Irish Catholic majority and for the minority there were Protestant religious but nonsectarian schools.

John Rose in the Confederation debates was addressing the issue of the rights to be given religious minorities and the nature of the guarantees to be given by subsequent legislation. He obviously believed that such guarantees would protect the minority from crass provincial self-interest, even if a national vision was totally absent.

Thus, there were two lines of defence for minority rights in Quebec. The first line was a national vision in other provinces. The second line was the presence of constitutional guarantees. With the Meech Lake accord, both those lines of defence are breached.

In the introduction of our brief we deal with the characteristics of the educational system guaranteed at Confederation. Outside Montreal and Quebec City such dissentient schools were and still are under the control and management of locally elected school commissioners and trustees. In Montreal and Quebec City initially the board members were appointed, but they held authority similar to that of elected trustees in terms of control and management.

School commissioners and trustees were responsible for the school systems of the English Protestant communities. Where the parents wanted schools and were willing to pay for them, the commissioners established schools, levied the taxes to build and operate them, hired the staff to animate them and regulated the course of studies. These were the rights and privileges which both Protestant and Catholic minorities in both Upper Canada and Lower Canada possessed in law as to their denominational schools at the time of Confederation. Over the years, the courts have ruled that these same rights and privileges are protected on the basis of the fundamental compromise of Confederation contained in section 93.

It is this compromise, described recently by Madam Justice Wilson in the Ontario separate schools funding case judgement of June 1987 as a fundamental compromise of Confederation in relation to denominational schools, that the Quebec government has been intent on modifying by school reorganization to facilitate imposition of its language regulations.

George-Etienne Cartier described the defence of the minority as the immediate response of all governments in the event of a violation of the rights of a local minority. Quebec's Bill 101 was passed in 1977. Its provisions, in the opinion of our legal counsel, violate section 93 of the Constitution, 1867 and of section 23 of the Charter of Rights and Freedoms, 1982.

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The Quebec Association of Protestant School Boards, QAPSB, whose members were confronted with the dilemma of either disobeying a provincial law or denying entry to English schools to Canadian children who qualified under the charter, sought and won a declaratory judgement in the Superior Court of Quebec. That judgement was subsequently upheld unanimously in the Quebec Court of Appeal and in the Supreme Court of Canada. This successful action, defending the rights of Canadians from other provinces, which cost hundreds of thousands of dollars, was totally paid for by the financially hard-pressed Protestant school boards of Quebec and their parent taxpayers.

In 1979, the federal government established a court challenges program under the jurisdiction of the Secretary of State of Canada. It was intended to provide financial assistance to organizations initiating court actions relating to educational or linguistic rights or appealing lower court decisions in regard to such rights.

In 1985, responsibility for the program was transferred to the Canadian Council of Social Development and its funds were to be dispensed by a language panel. Both the Secretary of State's office and its successor, the language panel, have been generous in their support of minority rights in other provinces. Yet, although QAPSB was defending the Canadian Constitution, no federal financial assistance has been forthcoming.

The experience of our federation, QFHSA, in regard to the court challenges program and the performance of the language panel, has not been greatly different from that of QAPSB. We, along with five parental co-plaintiffs, initiated an action in the Superior Court of Quebec in Montreal in 1978 against Bill 101. A year later, we received a financial grant of \$15,000 towards the cost of our factum.

When we applied for additional assistance to update our factum in the light of new legislation and a flood of court decisions, we ran up against

criteria of the language panel that were outside its terms of reference. They refused to support our contestation of section 72, language of instruction, on the grounds that the matter had already been decided. That judgement was a lower court judgement that the Quebec Court of Appeal refused to hear on the grounds that it had been superseded by Bill 101.

Thus, although its terms of reference included the provision of financial assistance to cases involving constitutional claims to official language rights that are arguable but have never been determined by the highest courts, the language panel has used the decision of a lower court as justification to deny financial assistance. In effect, instead of helping us, the language panel has immunized Quebec's Bill 101 against our challenge.

George-Etienne Cartier described the protection of a local minority as all governments coming to its assistance. What is happening now is that all governments ostracize the victimized minority. The forces of provincial self-interest and political expediency have become so strong they blur the national vision. The occasion of the Meech Lake accord should have been an opportunity for at least a partial restoration of the national vision. It was totally muffed. Instead of ensuring that uniform protection of linguistic minorities across the country were enshrined in the Constitution, it provides the possibility for a further gutting of minority rights.

We do not subscribe to the theory that because Quebec did not sign the 1982 accord, it was not a full member of the Canadian family. Quebec was and is a province of Canada and is still subject to the laws of Canada. The Meech Lake accord would modify the base of those laws by placing alongside the fundamental compromise of Confederation, reflected in sections 93 and 133, the notion of Quebec as a distinct society, thereby undermining the guarantees provided the minority in Quebec.

The only safeguard against that prospect for a minority already circumscribed and diminished by repressive provincial language laws and regulations is a vague exhortation to preserve linguistic duality. The Supreme Court in June 1987 ruled that the charter does not apply to section 93 of the Constitution. The latter is above the former. Does placing "distinct society" alongside "fundamental compromise" also elevate it above the charter? Even if the answer is no, what about the right of the English-speaking to flourish and prosper as communities, including the right to renewal through equal access to immigration?

What safeguards are there in the Meech Lake accord to deter and discourage conflict between provincial laws to promote a distinct French identity and the rights of individuals under the charter and under the Constitution? Each time there is a conflict, are we to endure 10 years of litigation, political intrigue and community decline, as we have with Quebec's Bill 101?

We do not want to be preserved in a cage of linguistic restrictions. We want equality of minority language, educational rights under the laws of Canada and the right as a community to develop and flourish. A prerequisite for that, as we demonstrate in our brief, is the abrogation of section 59 of the Constitution Act, 1982.

In the absence of abrogation of section 59 there will not be equality of minority language educational rights in Canada after the Meech Lake accord. When you raise legitimate objections to the accord, "Don't touch the fragile seamless web" is the response. "Your concerns will be dealt with at the next round of amendments."



Premier Bourassa of Quebec has already indicated his government's strategy for the next round of constitutional amendments. It is a further whittling of the protection of the linguistic minority in Quebec. An interview of the Premier published in *Le Devoir*, December 5, 1987, ends with the phrase, "Il s'agit de corriger les échappatoires."

The loophole, *échappatoires*, he refers to is the constitutional right of a Canadian family with schoolchildren to move from one province to another without the children being subjected to the traumatic experience of an involuntary change of the language of their instruction. It is clear that the Quebec government has no intention of unilaterally rescinding subsections 59(1) and (2) of the Constitution and thereby allowing for provisions of clause 23(1)(a), mother tongue, to come into effect in Quebec.

The rescinding of section 59 is the prerequisite condition for uniform protection of the linguistic minorities across Canada, a state which, according to the Premier, the first ministers believe already prevails. In a letter we quoted from at the beginning of our remarks, he stated, referring to the "distinct identity" clause, "This expresses the conviction of first ministers that Quebec's distinctiveness can be promoted without taking anything away from the uniform protection of linguistic minorities across the country."

In our brief, we also quote the testimony of Prime Minister Mulroney that minority educational rights are more limited in Quebec than elsewhere. We quoted from an interview given by Premier Bourassa, who is intent on whittling further the already more limited protection of the English minority in Quebec, not on raising their rights to a uniform national level. Obviously then, premising that they signed the accord in good faith, the conviction of the first ministers is based on an illusion of equality of rights across the country that in fact does not exist.

We support the, as yet, illusory conviction of the first ministers that there be a uniform protection of linguistic minorities across the country, to be achieved by rescinding section 59. It should be a prerequisite to ratification of a modified Meech Lake accord, one that ensures that section 23 of the charter is elevated above "distinct society." Failure to achieve these two conditions will not only deny the vision of our forefathers, it will also confirm that one of the intents of the Meech Lake accord is not to bring Quebec into the Constitution, where it has always been, but rather to take the English minority in Quebec out of the Constitution, a potential which we have demonstrated exists.

I thank you.

Mr. Chairman: Thank you very much for the outline of your position as well as the other submission that we have. I wonder if I could just ask you one question of fact, because it came up this morning and I know I was not as aware as I probably should be of how it works. When I first heard about the language panel, I assumed it was a Quebec body, but I gather it is a federal body. The irony is that we had the Canadian Council on Social Development here just before lunch. I wish they had come later; we could have explored it. Could you just briefly tell us how that works? How do they get their money and how does that all sort of fall together? I take it that it is for minorities throughout the country who wish to take cases through to the Supreme Court. Is that it?

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Mrs. Koeppe: I would refer the question to Dr. Potter.

Dr. Potter: The language panel itself was set up by the Secretary of State's office to remove the issue of supporting court actions that might possibly involve the federal government itself since frequently the Minister of Justice is mis en cause in the case. There was an understandable desire to establish an arm's-length relationship between such court actions and the federal government itself, so they set up the language panel under the jurisdiction of the Canadian Council on Social Development, and a budget was provided for the operation of the language panel.

The language panel itself consists of five members. Three are francophones: one from Nova Scotia--this was the composition last year anyway--one from Ontario and one from Saskatchewan. The chairman is an anglophone from Ontario without a vote except in the instance of a tie, and the other member is an anglophone from Quebec.

Our experience with the language panel has been that they have a double standard; they openly admitted that they had one standard that they applied for cases outside of Quebec and another standard for cases coming from Quebec. We have had great difficulty with them. They refused to supply us with the curriculum vitae. They told us the anglophone from Quebec was a representative of the community, so we asked for his curriculum vitae. In 18 months, we have not received that curriculum vitae, although we have asked about 10 times. So there has been some difficulty.

We have no objection whatsoever to three francophones on the panel. We say that is very appropriate indeed when they are dealing with cases coming from outside of Quebec. We argue that for equal justice surely they could find some mechanism whereby when they are dealing with cases coming from Quebec the minority should have a majority on the panel just as was the instance when cases were coming from outside of Quebec.

There have been instances where we have been very dissatisfied with the operation of the language panel, but we have not been able to get anyone at the political level to respond. The minister says it is outside his hands, because he understandably wants to keep an arm's-length relationship. So it has been a difficult time, and it reflects one of the problems, I guess, of administrative bodies.

Mr. Chairman: Thank you. As I say, perhaps I should have been more informed about the nature of that panel, but I was not, and when it came up again I wanted to determine exactly what it was because clearly it could play a very important role to minorities.

Dr. Potter: It could play a very vital role. It is really very unfair that a small community should have to carry the full burden of defending the rights of the total community; it has a very vital role to play.

Mr. Chairman: One question flows in reading your brief, and I just want to be clear on this as well. I appreciate that in a legal sense Quebec is a province of Canada and 1982 did not change that, but it seems to me that none the less there was a problem there. You say you do not agree that it was left outside, but does one not have to be a little more nuanced than that? Surely there was a sense there among a pretty large number of people that something happened in 1982 which they did not subscribe to, and as we try to

work our way through this and establish equality of linguistic rights, do we not none the less have to accept that as a reality?

I guess the testimony that is always brought before us is the testimony that Mme Chaput-Rolland gave before the joint committee, that that April day in 1982 was not a day of rejoicing but rather a day of great sadness and that while legally Quebec was part of the Constitution, none the less there was something very significant and major that was lacking and that the intent at least of the 11 as they approached the Meech Lake agreement was to bring Quebec willingly in. I am not saying that therefore justifies not treating minorities well, but I just think we have to try to establish some basis on which to build.

I find it difficult to fully accept your view that everything was hunky-dory and there was no problem, because it seems to me there was and is until we have Quebec willingly, if you like, accepting the Constitution.

Dr. Potter: We are not opposed to Meech Lake per se. We fully subscribe to bringing Quebec into the Constitution, as they phrase it, but not at any price and particularly not at the price of the rights of the minority exclusively. Our brief does not call for the total rejection of Meech Lake; it calls for an amendment to Meech Lake to recognize where the weaknesses are and where the vulnerability is, but we are not opposed to the principle.

Mr. Allen: If I could just take it on from that point, we have had representations from French-language minority groups outside Quebec--the Acadians in New Brunswick, l'Association canadienne-française de l'Ontario, the federation of French organizations outside Quebec nationally--to the effect that their legal advisers tell them that the language of subsection 2(3) in the Meech Lake accord, where it speaks about promoting the "distinct society" of Quebec, is language they should strive for for themselves in other parts of that section, in order to enhance the word "preservation" and escalate it to "promotion."

Their argument is that the language that pertains to the action of the government of Quebec and the power it has implies quite clearly that since the "distinct society" includes a long, historic and well-founded English minority in the province, its rights are being promoted, not just preserved, or could be under that clause, whereas theirs are simply being preserved.

That seems to run counter to your reading of the overall impact of the Meech Lake accord. I wonder if I could have your commentary on that because that is a striking contradiction, at least in legal advice, if your advisers tell you differently.

Dr. Potter: You are quite right, but it reflects the ambiguity of the phrases. If you followed the discussions closely, you would find that there was entirely an opposite interpretation of the meaning of "distinct society" when the matter was discussed in the National Assembly of Quebec. One of our concerns and one of the reasons we are focusing on this issue is that, although we recognize the accord recognizes the duality in Quebec and says that should be preserved, in the discussions in Quebec we have not seen any evidence of that interpretation. The interpretation in the National Assembly is basically a nationalist society in Quebec, so there are two contradictory interpretations that are existing side by side, one used in Quebec and the other used nationally, and we are seeking clarification of that.



Mr. Allen: I understand your concern and I have some sympathy with that. I wonder whether we do not have to bear in mind the political context in which words are used by political leaders. Obviously, there is a dramatic contradiction between what Mr. Bourassa says section 2, as an interpretative section, means and what Mr. Mulroney says it means. I appreciate the problem.

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At the same time, I think if one works with some sophistication in the political arena, one quickly learns that Mr. Bourassa, for example, having to defend a very minimum demand from the point of view of historic demands Quebec has placed before the nation, is going to have to escalate the language around how much he accomplished. There are many people in Quebec, among reasonably moderate nationalists even, who say that he did not get all he could have got and should have gone for more, and that if they will be there in the future, they will go for more; whereas Mr. Mulroney has a problem, outside Quebec, of having to defend having done anything at all that appears to lean in the direction of Quebec, so he has to put the language in a totally opposite direction.

That confuses your life, and mine, endlessly, but it is not their interpretations we have to rely on; it is of course whether the courts will take that language, use it with some sense of balance and respect the general force of the charter, section 23 and those things, as they lay them side by side when they are confronted with individual cases. Is there not some problem in using the language of the political leadership as your base of interpretation for a section like section 2?

Dr. Potter: It is the rights of our children we are talking about, right? We feel those rights should be as clearly stated as possible, not in legalese but in language that their parents can understand and that they themselves can understand when they grow up, when they read.

I point out to you that I agree with you. The provincial accords are matters of political negotiation and give and take, but in the matter of the 1982 accord, which you said Quebec was essentially excluded from, the sweetener in that accord intended to bring Quebec in was really at the expense of the minority in Quebec. I am talking about section 59 and how section 59 got into the accord in 1982. It was not there initially when the original draft was distributed on November 5. What was there was an equality of minimum linguistic educational rights across Canada, but then there was negotiation in the back rooms and section 59 emerged.

I was at a meeting when the accord was announced publicly and distributed, and when we told people about section 59, they would not believe it. They insisted that there was equality of minority educational rights. My colleagues here can testify because there was a board meeting of this organization. Indeed, we had to go get a copy of the Globe and Mail to find out about section 59 because it was not even reported in our local press. That is how swift and sudden was the change.

The members of the minority community have borne the burden of that sacrifice, because what section 59 does is exclude from the right of choice the children of naturalized parents whose mother tongue is English but who did not do their schooling in Canada. That is different from section 23. Section 23 puts constraints in terms of mother tongue, sufficient numbers and nationality, but when it comes to Quebec, section 59 expands the constraints by excluding from the rights of section 23, naturalized Canadians whose mother tongue is English.

I suggest to you that was imposing a total sacrifice on the minority community in an attempt, by the Canadian community as a whole, to bring Quebec into the agreement. I agree it is a political process and there has to be give and take, but there is no provision for the minority to participate in the negotiations of give and take. I feel that is what the basic deficiency is. When the Canadian Constitution was formulated, we had strong representation in the body that made those concessions and found the modus vivendi. We have no participation now in that process and so we, in effect, become the pawns in the negotiation process.

Mr. Allen: I take it that by section 59, you are referring to the provision whereby equal educational rights under paragraph 23(1)(a) of the Constitution would come into effect by proclamation issued by the Queen and the Governor General of Canada under the Great Seal of Canada, but that this would only happen, under subsection 2(2), when it was authorized by the Legislative Assembly of Quebec.

Dr. Potter: That is right.

Mr. Allen: Therefore, the implementation of this appears to await a resolution of the status of Quebec following the 1982 constitutional settlement.

Dr. Potter: That is precisely it.

Mr. Allen: Thank you.

Mr. Chairman: I just want to explore a little bit more the problem, I guess, of the protection of the minorities, the collective rights, if you like. I suppose we should look at that question in the context of Ontario and of the francophone community here.

I guess it was 20 years ago that former Premier John Robarts brought in the first language legislation in terms of education. For the first time, French was recognized as a language of instruction. During the last 20 years, while no one would claim that we have done everything we ought to have done, none the less, I think Conservatives, Liberals and New Democrats have certainly worked together to enhance various French-language services and so on.

None the less, for the Franco-Ontarian, there are certain sociological realities, I suppose, of living in Ontario which mean that, even with a tremendous effort by the provincial government--the creation of institutions such as hospitals and universities--all that kind of infrastructure--it is far from where they would like it. It is always difficult. Our witnesses this afternoon, talking about the caisses populaire, gave, I think, a beautiful, clear example of some of the problems that arise. So there have been good intentions, people wanting to do things and many things happening, and yet still a society, a collective, a Franco-Ontarian collective, still senses a great deal of danger.

Then we look at the anglophone community in Quebec, and there we look at it in an historical context going back to, I guess, MacLennan's two solitudes. None the less, the anglophone community for many, many years had really created its own institutions. In effect, by itself it was able to really live independently, if you like, of the majority community. In a sense, it is in the last 20 years where, outside Quebec, at least in some provinces--New Brunswick and Ontario in particular--there has been an attempt to aid the minority. Suddenly, there was a real sense on the part of the anglophone

minority in Quebec that it was under attack. Indeed, it was, and in certain circles, is. That has been a factor, and I suppose Bill 101 has been a particular instrument that has caused tremendous concern and harm.

In trying to deal with that, whether through Meech Lake or in some other sense, really being able to establish equality for the two linguistic groups is, perhaps at first sight, simple. One just says, "Look, we make sure that right across the country, in every province, it is the same." I suppose it comes back to the distinctiveness of the Quebec society, that it is the only province where there is a French-language majority and where there are various French-language institutions and so on. We talk of the foyer principal and so on. How to reconcile the collective rights of what I will call the official language minorities and, I suppose, the collective rights of the Quebec majority but which is none the less a minority in terms of Canada and North America? I guess that is where we all, at times, are struggling because I think no one here likes to see legislation which is punitive in nature in terms of a language. One can understand legislation which is affirming and helping.

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In that context, we had the association of French-language jurists before us and they were recommending a change that, either in terms of Meech or perhaps a new clause, rather than dealing with what is stated to be the existence of French-speaking Canadians and English-speaking Canadians, to put in a clause that would deal with the minority, identifying the collective minorities--the French-speaking minority group which is outside of Quebec and the English-speaking minority group inside Quebec--and thereby providing certain rights.

Do you see that as a route that you think might be useful to follow in trying to establish more clearly a sense of the collective rights of those minorities in some fashion in the Constitution, whether it is part of Meech or simply as a separate amendment, another part of the Constitution, not dealing with French-speaking and English-speaking persons, but recognizable collective groups? I am just interested in your thoughts on that.

Dr. Potter: My first response is that I suspect the francophone communities outside of Quebec are more homogeneous than the anglophone community in Quebec because that community in Quebec has a variety of elements in it. There are the old Quebecers who have lived in Quebec for generations and there are the new Quebecers who have come from a variety of countries and only share in common the language but not necessarily the culture; they have come from other cultures. So I suspect there is more diversity in the minority in Quebec than is the case outside of Quebec.

If you are just talking in terms of community rights, I think it would be very difficult to define that community other than its linguistic interest because, culturally, they are very diverse. But we have not thought of it in terms of community rights. We have thought of it more in terms of the rights of individuals and the rights of parents, particularly the right of the parents to have some control over the education of the child.

Mr. Chairman: I appreciate that and I think that is an interesting observation you make about the nature of the anglophone community in Quebec.

Mr. Harris: I understand your problem. I want to ask you a question outside of your presentation. Does your association, or any of the minority



language associations in Quebec, have any liaison with other minority language associations outside of Quebec, like the Association canadienne-française de l'Ontario in Ontario?

Dr. Potter: Speaking of our association, our liaison is with the Ontario Federation of Home and School Associations and we are members of the Canadian Home and School and Parent-Teacher Federation. We do not think essentially in terms of a parallel between the minority in Quebec and the minority outside of Quebec because, although we appreciate the problems of the francophones outside Quebec and fully subscribe to an improvement of their position, we feel that what we had and what we are entitled to was an equality of rights in Quebec.

We feel the real issue is what the nature of the compact was at Confederation. We were part of the province of Canada and Confederation was more than just a political pact, it was a social compact between the French and the English in what was then the province of Canada. We argue that there should be equality of rights in Quebec. That is our concern, that there should be equality of rights.

Mr. Harris: Do you know if the Quebec public school board association has any liaison with any--

Dr. Potter: I cannot speak for the Quebec Association of Protestant School Boards. I do not think they have any. I think Alliance Quebec, which is basically a lobby group for the anglophone community, has maintained association with the Association canadienne-française de l'Ontario and with the Fédération des francophones hors Québec.

Mrs. Koeppe: If I might just add, the Quebec Association of Protestant School Boards does have liaison with other groups of trustees across Canada through the Canadian School Trustees' Association, the CSTA.

Mr. Harris: Do you get any support from them?

Mrs. Koeppe: Last June, before the Meech Lake accord, we passed a brief at our own convention in May and then the Canadian Home and School and Parent-Teacher Federation ratified it. That means representatives from every province in Canada sent letters supporting our position to Prime Minister Mulroney and the appropriate officials. The QAPSB, the Quebec Association of Protestant School Boards, brought a resolution to the CSTA conference in Prince Edward Island last summer, where it was also ratified. There is community support.

Mr. Wiener: It was unanimously supported by all the boards across the country.

Mr. Harris: Did anybody pay any attention to it?

Mr. Wiener: I do not know. It was very carefully explained.

Mr. Harris: There have been other minority groups who have found strength in numbers when they had a common cause, and it strikes me that you do have a common cause. I am not saying the historical situation is the same, but there surely are causes that are common with other groups. I am talking about minority language. I am not so concerned about your other mandates but with your minority language mandate. That is why you are here.

When I bring up your situation in Ontario, the answer I get, from whatever vehicle, is: "Yes, it does not seem fair, but that is no reason for us to--you know. We are Ontario. We are going to try to be fair." There is no collective assistance, it does not strike me, from any groups outside of Quebec to help fight your cause.

Dr. Potter: That is why we are here today.

Mr. Wiener: A very personal comment: I believe the residents of Ontario have been Canadians first, possibly more than those any other province, possibly because of its geography. You have a special history and a special obligation, I feel.

Mr. Harris: Let me put it this way, I think it would be in the interest of the Association canadienne-française de l'Ontario to finance your court case. I might as well be blunt about it.

Dr. Potter: Certainly, we will pursue that point.

Mr. Villeneuve: May I also thank you for making your presentation. We had a very impassioned presentation this morning, from the Freedom of Choice Movement from Quebec. I represent an area which is very close to Quebec in southeastern Ontario. We have many disgruntled former Québécois who have moved to my riding. I get different messages from them. However, the fact that I think you have a common problem, maybe even more so than the francophone community outside of Quebec--and I agree with my colleague Mr. Harris that possibly you would have common interest in preparing a brief.

Your problems are not that dissimilar, except that you have to deal with a Bill 101 which I, coming from Ontario, had not quite realized the ramifications of. I guess when you live in that particular atmosphere, it becomes even more so. I think your presentation here today, along with that of some of your colleagues who basically gave us the same message, has triggered something in this committee that says we must address this. Whether we can correct it, I think it should be on the record that there is a pretty major problem there.

1530

Dr. Potter: It is encouraging to hear you say that. We have been struggling for 10 years to get the issue addressed, to get people to recognize there is a problem.

Mr. Villeneuve: The English-speaking people in Canada as a whole have never been considered to be suffering too much, thank you very much, but I think you bring up a very particular case that has to be addressed somehow, somewhere, and probably this is the best vehicle.

Many of your people who come to the riding I represent affiliate themselves with the Alliance for the Preservation of English in Canada. What happens there is that they almost think they are trying to create a situation for the minority language in Ontario that you are living in Quebec. That is not going to solve anything; it certainly tends to polarize. I certainly understand what you are saying.

Dr. Potter: We think it would be a good and equitable Canadian solution to establish at least a minimum level of equality of minority rights. Provinces could improve upon that minimum level, but at least there should be

a minimum level of equality of linguistic rights so that parents have an acknowledged right to have some influence over the language of instruction of their children.

Mr. Villeneuve: I think you bring a very valid argument. Thank you.

Mr. Chairman: On behalf of the committee, I thank you for coming here this afternoon and sharing your thoughts with us. As Mr. Villeneuve says, part of this trip along the road to Meech Lake has been one of looking at minority rights in some detail. I think, as should happen in a committee such as this, we have been learning a great deal. What we are going to have to do in the weeks and months ahead is try to focus on some possible solutions, or at least beginnings of solutions that will provide some real protection to official language minorities in this country. We thank you very much for coming today and sharing your ideas with us.

Dr. Potter: Thank you. Our appearance here has lifted our expectations.

Mr. Chairman: I call upon the representatives of the Women Teachers' Association of Ottawa, the president, Janet Castle, and a member of the executive, Nancy Douglas. If you would be good enough to take a seat, we have circulated a copy of your submission, and I will simply turn the microphone over to you. Following your presentation, we will follow up with questions.

#### WOMEN TEACHERS' ASSOCIATION OF OTTAWA

Ms. Castle: Thank you. I think you will be pleased to hear that our brief is mercifully brief and that I read very quickly.

The Women Teachers' Association of Ottawa is a branch affiliate of the Federation of Women Teachers' Associations of Ontario. Our affiliate represents over 900 elementary women teachers in Ottawa. We recognize the need to make sure that our concerns are expressed even in the face of the adamant refusal of our Prime Minister to listen to the opinions of the population he represents. We find it discouraging to be appearing before a legislative committee after hearing and reading reports that the Premier of Ontario is unwilling to make any amendments to the accord no matter what we say.

The women teachers' association makes this presentation because we are vitally concerned about the rights of women and matters which will affect those rights. We have a stated commitment to be a visible, strong example to the children we teach and feel that silence in this matter would violate that commitment. Not the least of our responsibilities is a dedication to the principles of democracy which we feel have been overlooked in this case.

We acknowledge and support the concerns presented by other groups and individuals. We too have grave misgivings regarding the fate of national programs under an opting-out clause and about the effectiveness of the proposed constitutional amending formula. However, we have chosen to focus our presentation on two areas of serious concerns: the process followed and equality rights.

It is difficult to accept that major constitutional change is being made in Canada in a manner which makes a mockery of Canadian democracy as it was established. The Meech Lake accord was concluded by 11 first ministers without consultation or opportunities for discussion with the House of Commons, the provincial legislatures, political parties, interested groups and major



organizations before it was signed. After the accord had been signed by 11 men in a closed room, our Prime Minister and our Premier tell us that there will be no tampering with the accord. The public will be heard, but there will be no amendments.

In our opinion, this is a sham. Now that we have been told what will be, we are free to discuss to our hearts' content with no hope of influence offered. It is difficult not to ask, "Is there a point?"

The process of executive federalism--that is, executive decision without consultation--is demoralizing to Canadians who want to believe in their governments. We do not believe that it is the wish of the Canadian population to have executive federalism entrenched. The accord requires two annual conferences of the 11 first ministers. It appears that decisions made on the Constitution and the economy each year in the Meech Lake style are to be given to the Canadian public without discussion and without support.

While we endorse the concept of having meetings to discuss and listen to each other, we deplore the entrenchment of the process. Surely this defeats the intent of the section.

We cannot accept willingly an entrenchment which will, in effect, render the House of Commons and the provincial legislatures ineffectual, leaving them capable of dealing with only the trivial matters of government. In our understanding, the provincial legislatures and the House of Commons could become little more than electoral colleges which will go no further than to choose those who will represent the government in the arena of Meech Lake. The removal of the day-to-day control of the legislatures on the delegates is a dangerous, unacceptable precedent.

The struggle for women's rights has been long and difficult. It is only now that the applications of sections 15 and 28 are becoming apparent since the charter--

Mr. Chairman: Excuse me.

Ms. Castle: I am going too quickly.

Mr. Chairman: I appreciate your reading quickly, but it is a little difficult for the interpreter. Could you slow down a tad?

Ms. Castle: You are asking a lot.

Mr. Chairman: We are not rushed.

Ms. Castle: Where would you like me to back up to?

Mr. Chairman: Just continue, but a bit more slowly would help them a bit.

Mr. Villeneuve: Sounds like an auctioneer.

Ms. Castle: You should see me at full clip.

Section 16 of the accord introduces uncertainty and ambiguity which we are not prepared to allow. By specifically exempting multicultural and native rights from being affected by the proposed section 2, doors are opened for judicial interpretation that other individual rights are affected. To argue

that ambiguity is the price of the agreement and that the courts will be able to work out the interplays of concepts is ludicrous. Anyone who has had experience with bargaining clearly recognizes the necessity of clarity of language. Is it possible that we are given constitutional change whose purpose it is to provide more work for the courts?

We agree with the Canadian Teachers' Federation analysis: "Clearly, all rights and freedoms guaranteed under the charter should supersede any group-based rights....It is unacceptable for governments to get together and opt out of fundamental rights whenever it is politically expedient for them to do so."

Women were not included in the original drafting of the accord, and the omission of their views and protections is blatant in its absence. We urge you most strongly to listen and to act now on behalf of more than 50 per cent of the population. Remove the risks to women's rights which are brought with ambiguous language. Do not force reliance on judicial interpretation which may undermine rights already agreed in the charter.

Conclusion: We have to believe that there is meaning to the process in which we are participating now. We must believe that our Premier will listen and will consider proposed amendments to such an important agreement. We need to believe that the strength of our government rests in its ability to grapple with difficult problems and to face the fact that reliance on a controversial and ambiguous agreement is irresponsible government.

For those reasons, we have two recommendations:

1. Take public hearings seriously and urge amendments to the accord before it is entrenched in the Constitution.
2. Delete section 16 and add a provision that the Charter of Rights prevails over the accord. Alternatively, add women's equality rights, sections 15 and 28 of the charter, to section 16 of the accord.

Mr. Chairman: Thank you. You said it was short, but it was also clear and to the point, which is often one of the nice things about short submissions. We do appreciate it. As you will understand, we have had a number of submissions from womens' organizations and from other groups from the women teachers' associations in the province, in most cases going after those two areas in particular. We appreciate that continuing thread and support. We will start the questions with Mr. Breaugh.

1540

Mr. Breaugh: One of the things you have suggested, I believe, is going to happen come hell or high water; that is, there will never again be a proposal put together, such as Meech Lake, that is not subject to amendment and that has a whole series of public hearings after the fact. I know of at least one joint committee that is going to be fervent about that and I know of at least one legislative committee from Ontario that is not going to put itself through this kind of exercise again. Whatever shape or form it might take, the process in the future will be completely different from what we are enduring under this one. I think members of this committee will attest to the fact that it is an untenable position to be handed a deal of this kind with their hands tied behind their backs.

Accepting the restrictions we have on us, one of the things we are trying to do is to search about for things that can be done that do not involve reopening the whole deal and do not involve amendments. Oddly enough, a number of very bright people who are concerned about particular aspects of it have been very forthcoming with suggestions about what we might do if amendments are not in order.

One concept has been the matter of a court referral that would clarify precisely what is the impact or the relationship on the Charter of Rights by this accord, so you would get a definitive court answer on that. Others have suggested companion resolutions that would go through the legislative process at the same time as the ratification process, but would stand apart from it.

Can you tell us whether you are aware of the court referral option, for example on the Charter of Rights question, and whether your organization supports that idea if amendments are not possible?

Before you answer, as a practising politician, the easiest thing for me to do would be to say: "I like your amendment and I will put it. It will not carry here and even if it did, I have to take it through the Legislative Assembly of Ontario and a dozen other chambers, so it might take me into the next century to get that one amendment put."

The amendment process is not quite as practical as many people think it is, so we are searching for other options. It has been suggested by Beverley Baines, for example, among others, that it would be possible to make a court referral on the matter of the Charter of Rights question and whether or not it is impacted by Meech Lake. Instead of having to take Brian Mulroney's word for that, we might be able to get one of the courts, either the Court of Appeal in Ontario or the Supreme Court of Canada, to finalize that question for us. Would that be an acceptable way to proceed?

Ms. Castle: Are you asking whether we are in favour of having the courts look at it?

Mr. Breaugh: It is a little more specific than that. One of the things is that the courts will look at this whether we do anything or not.

Ms. Castle: Regardless, exactly.

Mr. Breaugh: The only advantage of the court referral is that it expedites the process. It is a technique that Ontario used, for example, last year on a particular bill. If you are not sure the bill will stand up in court, you can put a question in front of the court which essentially says, in this instance, "Is the Charter of Rights in some way affected by the Meech Lake agreement?" The Prime Minister says no, it is not. All we need is for some legitimate person to say the same thing and we will be happy.

Ms. Castle: I would have to agree with that one. Yes, we would be in favour of that. I think Ms. Douglas would like to add to this.

Ms. Douglas: I know the option has been talked about, but I guess I have a question for you. Are you telling me that this can be done before the Ontario Legislature would vote to ratify it?

Mr. Breaugh: That is possible, yes.



Ms. Douglas: Because if it is not done until after it is ratified, it does not matter anyway.

Mr. Breough: I disagree with that. I think it does matter, but in my view it would be preferable to try to do that, if you could, before the ratification process took place. We do have another couple of years. It is conceivable such a question could be drafted and put to the courts and you would get your response back before that occurred.

Ms. Douglas: It is only good to anybody if it is done before it is voted on, though.

Mr. Breough: No, I disagree.

Ms. Douglas: What we are saying in all this is that it is ambiguous language. We do not want it interpreted by the courts after it has already been agreed to--that is what this is saying--because it is risky. If you are saying, "Could we put it to the courts before we agree to it and then we will know what we are agreeing to?" then obviously we think that is an improvement over agreeing to something when we do not know what it is. But if you are saying, "Let's agree to it and then find out what we are agreeing to," then I would say that is no improvement. That makes no difference whatsoever.

Mr. Breough: I would argue a little bit in the sense that my preferred option would be to get the court referral done and the answer back before it is ratified, but even if it were not back, I am most concerned that the precedents that are set in front of the courts be clear and on the grounds that we want. The advantage of referring a question to the courts is that you can put the question to the courts in a clear form so that you get the kind of answer you are looking for. If you do not do that, then it will be individual court cases that may not have a whole lot to do with what your problem is.

Ms. Douglas: So after it is agreed to, we will get the bad news clearly instead of vaguely.

The question you asked us was whether that would be acceptable. I think it would be fair to say it would be acceptable. It would be a good thing for us to know what we are agreeing to before we decide whether to agree to it or not. Otherwise, I would say it makes no difference. It is still a sham to agree to it, put it through the Legislature and then say: "OK, now let's see. We'll set up the court session as soon as we can."

Mr. Breough: I am not trying to argue a lot with you here today, but the "sham" stuff bothers me a little bit. You and I have both negotiated agreements with school boards. We do not call it a sham when somebody challenges that and goes to court; that is part of the process. When somebody puts in a grievance a year later, that is part of the process. We understand that, and we do not say that the agreement is a sham either. I can use hyperbole too and have done so on occasion.

Let me just ask one other question of you: As I said, we are very concerned about the process itself, which to many of us is inexplicable, intolerable, undemocratic and a whole lot of other things. Now we are looking at trying to make some suggestions in a positive way about what we might do that would make it more legitimate, more recognizable, more democratic to people. It does not take very long until you get into problems. For example, a number of people have suggested amendments. The mechanics of that are a little death defying unless you have some technique whereby we are not arguing over which word gets inserted as the third word in the sentence.

In other words, one of the suggestions that has been made to the committee is the companion resolution concept, whereby you would put in front of all the legislatures in Canada the same companion resolution--the wording is the same--and so they all vote for or against the same set of words.

Do you have any difficulty with things like that, that we would set up a process whereby, for example, there would be public hearings across the country, maybe done by a legislative committee such as this? We would take ideas from groups like yours. We would try to get concurrent wordings, I guess, put together in front of the legislatures, and at the end of the process there would be the ratification, maybe by formal votes in the legislatures and by some agreement struck by the first ministers at their conference. But people would be able to see that there is a public hearing part to it, that there is part to it where common sets of words are attempted to be found to word it the best way we can, and at the end of the process is the ratification.

Would your group, for example, which would be one of the interest groups that would logically be putting forward suggestions such as that, really be in a position to participate in that kind of stuff?

Ms. Douglas: We are participating. I guess what you are saying is, suppose we let this one go, so to speak. We will all just let the accord go through the way it is and then we will start again and we will see if, from the ground up, we can have hearings across the country and come up with something else that can go through all the legislatures.

I think the chances of that are zero. There have been so many hearings on the accord, federally and provincially, that surely through this there come up again and again the same two or three fears, dangers, ambiguities and risks that large groups are worried about. On some of them, like the one we have, we say there is a threat to women's rights. Quebec says "No, there isn't." The federal government says, "Oh, no, there isn't, and we don't intend that there will be."

Now, as to something, alternatively, that adds women's equality rights in the part that says native rights and multicultural rights, adding "and women's rights" or adding "and sections 15 and 28" as well in there, if that is what they intended in the first place and there was an oversight and it did not get in, surely it is possible now to come up with something, if you want to call it a companion resolution, that would go through the Ontario Legislature at the same time. Ontario would say, "These go together and we tell you to take both or none," and Quebec, if that is what it intended in the first place anyway, can put that companion resolution through too, and that is the end of it. Then everybody is happy, because that is what they said they wanted in the first place.

We are saying, "OK, then say what you mean," and the Ontario Legislature would say, "Yes, that is what we intend." We want you to say what you mean, so we want you now to go back. You have passed the accord; now pass this companion amendment which simply says what you said all along you meant to say, and that is it.

I know you cannot go back and get into negotiating in all the provinces and so on, just as in our teacher negotiations we cannot negotiate individually with each teacher. I realize there are those difficulties, but you have surely had the same serious problems again and again. They are simple, they are clear and some of them could surely be gone back to and done.

1550

Mr. Breagh: You have answered my question. I think you can. The thing I have to point out to you, to be fair, is that it is not quite as simple as we would like it to be. I wish we could tell you that we could draft a law and the Supreme Court of Canada would give us exactly the interpretation we as legislators want. The problem is they do not do that. I wish they did, but they do not. We would like to assure you that whatever law we might draw up in Ontario is never going to be challenged in front of a court. Unfortunately, that is not true. People have a right to do that.

A number of native groups have, for example, actually drawn up resolutions themselves, simply because, I guess, they have dealt with governments a lot and know how to draft amendments. But the drafting of a Constitution is something that none of us in this country has really done. We do not have a great deal of working experience with that. If, for example, your group and interest groups like yours would be reasonably part of the process and feel included in the process by saying, "What we want to do is tell you what we think is right or wrong about the Canadian Constitution," then we will get people--we have them employed at the Legislature--who draft our own bills, and they would draft the actual words, part of which is choosing words that have been in front of the courts many times so we are reasonably sure how the courts will deal with those.

If that is an acceptable process, we may be able to put together something which is at least more palatable to many of us than this Meech Lake process, of which I think many of us would say this is the last time this should ever happen.

Ms. Douglas: But would it ever get anywhere? Right now we are looking at the accord and the Premier is saying it is going to go, whether you like it or not. Actually, I am glad to hear--I was thinking this morning that we come with heavy hearts thinking, and what is the point in this? There was a quote on the radio--it was Mr. Harris who I see is not here anyway--that perhaps if the Premier found a glaring error, he might consider amendment. That is not very encouraging. I thought, this is discouraging for us to come here, it is discouraging for our whole group, all the 900 women teachers saying, "What is the point if they will not listen anyway?" I am glad to hear you find it discouraging too, frankly, because I thought if I had to sit here for three days, the way you have, and wonder whether--

Mr. Breagh: I wish it was three days. Three days I can handle on my left ear. It is the other six weeks that are getting me.

Ms. Douglas: What you are saying is, if we start again, would that be all right?

Mr. Breagh: I am saying a little bit more. I am saying that to me, as a member of the Ontario Legislature, the process is intolerable. I will not go through this again. I am going to play a part in designing a different kind of process for the future. I want to make sure there are a number of groups that will participate. Obviously, I am not interested in setting out on a long--

Mr. Chairman: Mr. Breagh, can I interrupt? I think there are two separate things here. I am not sure if it is clear. One of them is in terms of process. Let us forget about Meech Lake for the moment because we know that whether it is next year or two years from now, there will undoubtedly be other



amendments about different sorts of things. So let us pretend they have not even done Meech Lake and it is simply not there.

One of the things we are looking at, as Mr. Breaugh has said, is that we are not going to go through this individually again. Groups out there are not. That is in no way questioning the motives of those who are involved in what was an 18-month or two-year process of people who were negotiating the accord. But what was missing in all of that and what has hurt it in all of that has been two things: the lack of any kind of clear public participatory aspect to what was being discussed, and also the fact that something is signed and then people are asked their opinion or asked to approve it.

One of the things we are looking at is saying: "OK. As it would appear that there are going to be other amendments from time to time and that we will be asked as a Legislature to be involved in it, we had better get down on paper a process that would ensure an organization such as yours would be able to participate long before anybody was supposed to get to signing."

I think that is one of aspect of it. I am not discussing there the problems that relate specifically to Meech Lake. But whatever else we have learned out of this, one thing is that the process, which in a sense has been used for some time--for the last 10 to 15 years or so, since the early 1970s--will not work any more, that there has to be a public credibility in the process in the sense that you participated. You might still be angry--anybody might still be angry--at the end with the result, but at least if you have been able to participate it is a bit different than looking at it after the fact. That is one part.

The second part is looking at what are the options that are open. Clearly, trying to amend it right there and now is certainly an option. Are there others that we might be able to look at, such as the ones that he mentioned and perhaps some others, which taken together might provide other routes that could also bring about change?

I think there are those two aspects, which do not detract at all from what you have said or what is in here, but I think we realize as a committee that we have to address some things that are going to be occurring again or later down the road. I just offer that as a slight clarification perhaps.

Ms. Castle: I was just going to ask how it is that you are going to guarantee in the future that this will not occur again. How do we know that we will not be here next year, the year after that and the year after that, if this goes through, as it looks like it will?

Mr. Chairman: I can give you an answer.

Ms. Castle: If you had one. I know that. But what kind of possibility for change is there if we have to get the unanimous agreement of 11 people in one room?

Mr. Chairman: I think what we are saying, and if you sat down with each member of the Senate-House of Commons joint committee, you would hear the same thing. I know you suggested there have been a lot of committees, but there actually have not been a lot of committees. One of the problems is that we are really the first legislative committee since the accord was actually signed, because Quebec looked at it before; we are really into new ground here.

What has hit us right between the eyes, as we finish our stay in Ottawa--this is the end of our fifth week and we still have a number of weeks to go--is that as legislators we will go through this process this time because there is a situation and a problem, and I think we now realize there are some things we think we can do that will bring us forward. We know we are not going to answer everybody's concern, but we hope we can at least move the debate forward.

We are not at the end of the process; there is New Brunswick and Manitoba, and there are other things that are going on. But as legislators, I do not think there is anybody here who would sit on this committee again if it was put to us in this way. I think you would find the same thing on Parliament Hill. Because of that, we are going to be making recommendations about how we are going to open up that process and start to set some steps. We are a provincial legislative committee, so we cannot set that out for the whole of the country, but we sure can do that in Ontario.

I feel very confident in saying that we will no longer have a constitutional amendment arrived at in that way. I am not saying there will not be first ministers' meetings or at times private meetings, but we are looking at a process which will ensure public participation; there are a number of options that can be selected. We are going to have to try to think that through and put those forward as recommendations to our colleagues in the Ontario Legislature.

1600

As I say, that is a separate issue from specific immediate changes to Meech Lake, but one of the critical things that has really come out of looking at this after the fact is that we have a terrible problem with process. As politicians, as people who are going around and listening to people, if we do not bring that back to our colleagues and insist that this is a reality out there, then we will not have done at least part of our job. We feel very strongly about that, and I just want to make sure that message gets through.

Ms. Castle: I am glad that you feel very strongly about it. Can I ask you if this furore is coming as a surprise to you? Was this reaction not completely predictable?

Mr. Allen: Mr. Chairman, may I intervene on a point of order?

Mr. Chairman: Yes.

Mr. Allen: I do not think the chair engaging in lengthy discussion with the witness is appropriate.

Mr. Chairman: I am sorry. I know; it is the end of the week and I am getting carried away. Mr. Allen, then Miss Roberts.

Mr. Allen: I am sorry; I did not realize I was next. I would not have mentioned it.

Interjections.

Mr. Allen: That is right. I just want to assure the chairman that I think his interventions are very helpful. I was not in any sense implying there was a problem in that.

You are teachers. We have had numerous presentations to us that have used language like "coup d'état" and "something going on that is analogous to South Africa," language that appears to import into the whole discussion an extremity of situation which from my perspective, and I think also from the committee's perspective, does not really pertain. I think it is important, as we express our concern about what is happening, that we do not at the same time fail to recognize that in fact the process of constitutional revision and reform in Canada in the last six years is far more open than it certainly was in the first 115 years of our existence as a country.

As we tackle this particular aspect of constitutional change--namely, focusing on the problem of Quebec and its place in Confederation, especially since 1982, and the isolation of the province after 1982--one should not think that everything else has to be solved now or it will not get solved or that everything has to be solved within the rubric of Meech Lake or it will not get solved.

It is quite clear there are major problems out there, not least of all the processes that my friend Mr. Breaugh was talking about and on which the chairman was elaborating, that have to be addressed in order to improve the process. We are trying to wrestle with all that but we do not want it to be seen in the context of an undue anxiety that somehow things are much worse now than they were a decade or two decades ago in terms of constitutional change.

Ms. Castle: I do not think that is our feeling. One of our points is that if we are going through this process, and surely there is a better way and surely there is time before it is finalized, then let us take a look at what the concerns are; let us take a look and listen to what the public is saying. If it is as simple as putting in a word here which will resolve things, then do it before it is a fait accompli. No one was implying that things are better now than they were 10 or 15 years ago.

Mr. Allen: Are they worse now?

Ms. Castle: Or that either. I do not think much has changed.

Mr. Allen: They are better, but not worse.

Second, I am not sure how I come out of these discussions in terms of this question of ambiguity and clarity and adding a few words here and a few words there. I have a feeling that if you actually sat people down to compose something they would elaborate as the meaning of "distinct society," they would probably create some major, egregious blunder that would trap somebody seriously and desperately down the road.

That would be more difficult to resolve in the courts than leaving it the way it is. It frequently is better to take the barebone structure of a constitutional statement such as we have and let the courts apply it to specific situations and to clarify it that way, step by step. I know it leaves a lot of down-the-road speculation up in the air for us. It is difficult sometimes to cope with the anxiety that engenders, but I really wonder whether, in the long run, given the fact that we do have legislatures, we do have courts, we do have lobby processes and we do have access, it would not be better to leave it that way. I just say that to you as a caution.

The other item I want to question you about is your comment that you agree with the Canadian Teachers' Federation that, clearly, all rights and freedoms guaranteed under the charter should supersede any group-based rights.



Can you relate that to your last recommendation, which has to do with the question of charter rights prevailing over the accord? I am not quite sure that many of the groups who have made this point recognize exactly what they are saying in some detail.

First of all, let me just refer you to a number of sections of the charter. For example, one can begin with reference to sections 25 and 27 which deal with the group rights of aboriginal peoples and multicultural heritage rights. One can deal with section 29 which talks about denominational school rights, which are group rights. One can refer also, outside of the charter, of course, to English and French language rights in the Confederation document of 1867.

There are a number of basic group rights that are right here in the charter so that when you ask that the charter somehow prevail over some other group rights in the interests of individual rights, you are really caught in a circular argument because this document defends group rights as well as individual rights.

Then you get into section 1, where it says, "guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society." That makes it possible for legislatures, even if you say that the charter is dominant, to still move in such a way as to act to balance some apparently rational--but when rational process is applied, unjust--legislation affecting individuals in an adverse way.

Miss Roberts: Like affirmative action.

Mr. Allen: Yes. You go to subsection 15(2). It does not really clearly and absolutely state a rational application of equality rights, because it says that affirmative action may be necessary for handicapped groups and individuals--but groups as well. Then you get to the very end of the charter, you get to section 33 and you find that all of it may be ditched by any legislature at any point, if it is prepared to take the political consequences and do it every five years, ratify it every five years before it is public.

If I can just ask you to be frank about it, in your brief, where you have asked for this kind of prevailing dominance of the accord, was it your intention or did you understand that there were, in fact, all those options for group rights to be set in tension with individual rights and that there would always be some dialectic, disagreement and ambiguity around all that?

Ms. Douglas: You are right. There are ambiguities in our brief, too, and you see what ambiguities lead to: all kinds of confusion. That is our very worry. Concerning the ambiguities in the accord, you are right that sometimes it is better to couch a phrase in an open way. As events evolve, it will be interpreted in what is probably the best way.

But I think this is the worst of all because it talks about inserting a section 2 which talks about Quebec's distinct society. If it were left at that, then that would be exactly what you are talking about. "Leave it. It is a little ambiguous. What is a distinct society and so on? But maybe it will all work out."

If it had been left at that, maybe. But it is the worst of both worlds here. It is not exact. It is like saying, "We are going to have this right"

and then saying further down: "But what we said up there does not apply to people with brown hair. What it says up there does not apply to aboriginal peoples or multicultural rights."

All of a sudden, what does that mean? What about everything else? If we made an agreement and we couched it fairly broadly and we said, "We are going to leave it like this," we could agree. But let us not tack in something that says, "Ah, but what we said doesn't apply to left-handed people."

We are looking at this now and we are asking what it means. I think that is serious because it is beyond ambiguity. If you had left it in the first place, fine. But do not tack in two groups and say, "But these two groups somehow are not affected." Well, what about everything else? That is what we are saying is the bad part about this agreement.

Mr. Allen: Yes, I am sympathetic with the impression that leaves. I think that attempt to respond to political pressure in the midst of the process, to deal with two groups, is unfortunate. It might better have been left and it still might well better be said, just as Lowell Murray did, that one should include section 28 for greater certainty that there is no adverse reaction upon that provision of the charter. I think that would be reasonable. I just wanted to be sure that you were aware of what asking that the charter prevail implied in reality. It is not as clear an action as it would seem at first glance, I think, as many people think it is.

1610

Miss Roberts: To take up from what Mr. Allen has just said, what you are suggesting may not achieve what you think it will achieve. That is a difficulty. Many people agree that it may achieve it and many people say it will not achieve what you think you are going to achieve by your recommendation 2.

What I would like to share with you, and the comments that my colleagues have made, is that we do take these public hearings seriously. We do take each suggestion and the amendment process very seriously as well. It is very clear that we as a committee are not going to go through this process again. We are looking at Meech Lake from all angles, and we are dealing with all the criticisms. Maybe the hue and cry that you have with respect to one particular part has to be balanced against the hue and cry that the women in Quebec have to say, "No, it is OK." We have to look at each presentation that is made to us, and I can assure you each presentation is taken seriously and looked at.

I hope you understand that your coming here today is very helpful to us, extremely helpful to us. Your brief, as well, indicates that you have thought through a very difficult process and have attempted to deal with it on behalf of yourselves and your members. Constitution-building is something that is very new in Canada. It is a process we are not familiar with. We have many, various constitutions to look at throughout the world. We have a very definite type of Confederation here in Canada. We are trying to work out a system that will develop a Canada that we are used to, that we want to continue.

I know from some of your comments that you think the Meech Lake accord may put women's rights at risk or there is a possibility of that. If you look at the charter itself, that possibility is already there. That is frightening for me. That charter exists; it is there. This accord may be helpful, as well as it may not be helpful. Ambiguities come and go. They will have to be dealt with in particular situations each time. It is difficult at this time for us

to say what political process can be put in place, but we have to look at that political process.

I would just like to ask you to comment on your concern, not just your concern for women and your particular indication, but your concern for--this is known as the Quebec round--trying to get the province that did not join in 1982; it was not a part. You can say, "Oh, yes, legally it was, da da da," and we know all those arguments. But they did not have the political will to join on the basis of the 1982 Constitution, the accord at that time. Now one Prime Minister and 10 premiers have got together and said: "This is a new way. This can get Quebec in."

Also, Québec was not holding everyone to ransom. I think there were a couple of western premiers who might have indicated from time to time that they had some concerns as well. I would like to speculate on how important it is that we complete this accord now, because if it does not happen now for us to continue as a nation, it has to happen some time. How do you do that? Those are the things we are trying to determine. I would like to hear your general comments.

Ms. Douglas: There is nobody who will say he does not have sympathy with bringing Quebec into an agreement. There is no question about that. Most people will say: "Yes, we probably have to give. We are probably going to have to agree to some things where we would prefer to have it our way but it is not going to necessarily work out that way."

This is a bad agreement, and one of the reasons it is a bad agreement is because of the way it was reached. It was virtually, "Let us lock everybody in the room and keep at it until something comes up." I am sure there must be people here who have done collective bargaining and know that is a standard technique. Our Prime Minister has done collective bargaining, and he used exactly that on them.

I do not think it is a very good accord, but having looked at that, we have said in our brief that there are lots of things we do not particularly like about it, but let us be realistic. Let us look at what is most important to us. We have tried to keep it simple because we know all these things you are telling us. We are saying we do not want that risk to women's rights. Why are we taking this risk? No, that risk is not worth bringing Quebec into the accord, if you want to get down to the bottom line.

For us, not having that clause in there is not worth it. That is not to say we do not want to negotiate next month or next year. Let us start it all over again; let us take it again. But no, it is not.

Mr. Chairman: Thank you both for coming this afternoon and making your presentation. Whether it is because we are at the end of our hearings here this week or we got terribly loquacious or what, I am not sure--

Miss Roberts: Even I spoke longer than usual.

Mr. Chairman: One of the things that happens in this process, and as we mentioned, this is the end of our fifth week of hearings, is that you start thinking out loud. I suppose it is partly because you are searching, trying to figure out how we can take certain problems. There is no question there are probably three or four very key, critical ones, where you are trying to say, "Is there some way we can come forward with recommendations while at the same time holding on to the good part of the accord?"



That perhaps leads us into longer statements than we would otherwise have wanted to make, but we do appreciate your answers. There is no question that the conviction of your feelings and the arguments that are here are very clear. I hope that, finally, when our report is done and presented to the Legislature, it will have gone, if not totally, at least some way along the road of meeting the needs that you have set out. We thank you very much for being with us this afternoon.

Just before closing our sessions here, I would like to thank the interpreters upstairs and also the staff from Queen's Park. We know we have had to run you around from hotel to congress centre. I also say to Mr. McGuinty, we thank you for the hospitality of Ottawa, and it has been a pleasure having you with us this week--and Mr. Morin. Sorry. I am thinking of Mr. McGuinty in his role as the chairman of the eastern regional caucus.

Mr. Allen: You gave him the whole of eastern Ontario, did you?

Mr. Chairman: He took it. Thank you. We will adjourn this meeting. We begin at 1:30 on Monday back at Queen's Park.

Clerk of the Committee: That is a possible 1:30. I will call your offices on Monday morning.

Mr. Chairman: It may be two o'clock, but we will assume it is 1:30.

The committee adjourned at 4:19 p.m.



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SELECT COMMITTEE ON CONSTITUTIONAL REFORM

1987 CONSTITUTIONAL ACCORD

MONDAY, MARCH 28, 1988

- Draft Transcript



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LEGISLATIVE ASSEMBLY OF ONTARIO

SELECT COMMITTEE ON CONSTITUTIONAL REFORM

Monday, March 28, 1988

The committee met at 1:35 p.m. in room 151.

1987 CONSTITUTIONAL ACCORD  
(continued)

Mr. Chairman: Good afternoon, ladies and gentlemen, and welcome as we begin our sixth week of sittings. I would like to invite Timothy Danson to take his seat. Mr. Danson, we welcome you here today. We have a copy of your brief, and to give you as much time as you would like to have, I will turn the mike over to you to make your presentation. Then we will follow up with questions from the committee members.

TIMOTHY S. B. DANSON

Mr. Danson: I do not know whether you have had an opportunity to read my brief. I would like to think that it is a reasonably intelligent and legible document covering, in essence, the fundamental opinions I have on the Meech Lake constitutional accord.

Mr. Chairman: Just for the record, we were in Ottawa last week. I believe this came in at the end of the week, and I do not think everyone would have had a chance to have read it. If there are certain things you want to really stress, perhaps you can underline that as you go through your opening remarks.

Mr. Danson: Thank you. For the most part, if you do get a chance at some subsequent time to read the brief in its entirety, it deals with most of the issues in a rather concrete way, both from my perspective as a private citizen and my perspective as a constitutional lawyer. However, apart from my brief, the views I have on the Meech Lake constitutional accord are also quite emotional, and while in my brief I speak from the head, I would like to spend perhaps two minutes, and not more than two minutes, dealing with the issue on an emotional level.

I think that to understand how I feel and how other people like myself feel about this issue from an emotional point of view may assist you in what I have to say subsequently in terms of the merits of the accord. To look at the Meech Lake constitutional accord strictly from an academic perspective would be a grave error, so if I may I will speak to you on the different level for just a couple of minutes.

I believe there was a dream. It was a most precious dream. It was a dream of hope and a dream of prosperity. It was a dream of a great nation and a great people. In this dream, we saw a people who transcended geographical boundaries and cultural diversities. It was a dream that inspired all dreamers, because diversity was not made an excuse for division but rather an opportunity for enlightenment and growth. In this dream, people set out determined to defy history and then remake it. Where there were tensions, the tensions were creative. These creative tensions challenged us to keep dreaming and to be imaginative.

This dream, in fact, began in 1867. Over the past century and more, the dream matured. It is a dream about Canada. It is a dream of hope.

However, on October 26, 1987, the House of Commons ratified the 1987 constitutional accord, telling us in no uncertain terms that this dream was just a dream, that Canada as a nation was incapable of achieving the grandeur which lay within its grasp, that in fact we are two nations with two languages and two cultures rather than one nation with two languages and many cultures.

Not only has the Meech Lake constitutional accord challenged the Canadian dream and turned it upside down, it has for ever handcuffed the ability of our children to make decisions for themselves in the future and to shape their own destiny, because we have entrenched an amending formula which requires, in material respects, unanimity. In the fullness of time, this will create political and intellectual paralysis.

When I refer to the fullness of time, not only in my opening submissions but as you see them in my brief, I do not mean tomorrow. I do not even necessarily mean next year. The fullness of time may be five years or 10 years, because a Constitution must withstand the process of time.

It appears that the Ontario government, like the federal government, is interested only in drafting errors. However, that puts the discussion into a straitjacket, because the first question is not about drafting errors but rather about coming to grips with what our vision of Canada is. There is simply no point in discussing the language of the accord without knowing the vision it is to reflect. Is the government of Canada now one among equals or is it to remain the paramount political authority in Canada representing national interests?

If it is one among equals, then the accord may be a step in the right direction. I have no criticisms of the accord if that is your vision of Canada; but if the government of Canada is to remain strong, then it is the wrong step in the wrong direction. If we want a community of communities where Canada becomes a loose federation of strong provinces with a federal government that merely referees among competing provincial interests, then the accord is no doubt a smashing success. There is no point discussing the ambiguities in the accord because they are merely a reflection of this vision.

If, on the other hand, we want a strong, national government but respectful of provincial interest, then the accord is a dismal failure. There is no point analysing the terminology of the accord because the battle was lost at its inception before the drafters even sat down to draw up the document.

The context is not that the accord lacks vision. The context is that it was not motivated by vision. There is no denying that Quebec is different from any other province, but it is also undeniable that every province of Canada is different from the next. Many Canadians find the Canadian experiment exciting because it does attempt to transcend geographical boundaries and cultural diversities. There is simply no cosmic necessity for Canada to exist. Greater nations have disappeared. That is why we must have a strong national identity and a strong central government to face a world that seems to be smaller and smaller every day. We simply are not a community of communities. We are one nation with a dream.

Young Canadians are not prepared to say goodbye to this dream, and I submit that ratifying this accord, in the context of time, in the fullness of



time--and as I say, it may be five, 10 or 15 years--will unleash a response of incalculable dimensions. In an effort to satisfy Quebec and promote its distinct identity, we forgot to protect and promote Canada's. The accord will attempt to hold Canada together through a mechanism which will eventually tear the country apart.

On the substantive side of things, I would like to address the issue of Senate reform. It would appear that even the strongest supporters of this accord agree that the changes the accord has with respect to the Canadian Senate are incomplete and inadequate. They argue that it is simply the first meaningful step towards Senate reform. The direction, though, is unmistakable, and that is to strengthen the authority of regional provincial interests in Ottawa.

This is what the supporters of the Meech Lake constitutional accord tell us, and if the supporters of the accord tell us that this new Senate is to be a more activist Senate, I suggest we must take their word for it. We must assume they mean what they say.

Then we must ask ourselves: If we are going to have this more activist Senate representing regional interests in Ottawa, what constitutional and what legal powers does this Senate have in law? The answer is that the Senate of Canada has the same powers as the elected House of Commons, except that money bills must originate in the House of Commons and the Senate can hold up constitutional amendments for only six months. In all other respects dealing with the day-to-day business of the government of Canada, the Senate has identical powers to the House of Commons.

Under the Meech Lake constitutional accord, we will have in Canada, over time, a provincially selected Senate that will have absolute veto power over matters of exclusive federal jurisdiction. That is a fact. I invite any of you, if you disagree with me, to challenge me on that in your questions as a matter of law, because it is, in my submission, an indisputable fact.

We will have an appointed provincial body which will have concurrent jurisdiction with an elected House of Commons. It is perhaps a bit unbelievable for anybody to speak of a strong Canada while at the same time allowing for an appointed provincial body which will have veto power over an elected federal body in areas of exclusive federal jurisdiction.

It was Harry Truman who said, "The only thing new in the world is the history we don't know." In 1976, the Australian Senate, which has essentially the same constitutional powers as the Canadian Senate, brought down the government of the day. So I am not being hypothetical.

A Constitution must be pure, in and of itself. It is rarely tested in good times. It is in how it responds to bad times and difficult times that the test of the substance of a country's Constitution is seen.

It is an affront to common sense, in my respectful submission, to concede, on the one hand, that the treatment of Senate reform in the Meech Lake constitutional accord is merely transitional and a stopgap and inadequate in and of itself, and then on the other hand include a requirement of unanimity for further Senate reform.

Even the Ontario government's own adviser--I think he was the government's adviser, Professor Peter Hogg--I am sure you have seen his book on Meech Lake. As I read that, he is a supporter of the Meech Lake

constitutional accord. He was my constitutional law professor. I have not talked to him since I have seen that book, but even he says on page 20 on Senate reform:

"There is obviously a real possibility that in future rounds of constitutional discussions the first ministers will fail to reach agreement on Senate reform. If that happened, then the new section 25 would become permanent. As senators retired or died, the Senate might gradually evolve into a 'house of the provinces' with its members feeling themselves primarily beholden to their province of origin rather than to any federal political party. This would probably change the character of the institution, making it more assertive in representing provincial or regional interests."

As I have already indicated, this is over matters of exclusive federal jurisdiction. So you even have Professor Peter Hogg, who supports the agreement, conceding that when it comes to the Senate we could potentially have a very serious problem, because, of course, of unanimity. To suggest that this is not a serious threat to federal sovereignty is to lose oneself in political deception.

I have a compromise solution, and I say "compromise" because it is not the solution I would advocate in the first instance, but if anything is going to be changed in this accord--on which I have my doubts--one can do it only by way of compromise. I would submit that this committee consider this recommendation with respect to Senate reform.

Until the first ministers and the Prime Minister agree on full Senate reform, the powers of the Senate must be restricted to an upper chamber of second thought with power to stall legislative change in the House of Commons for only six months. Put another way, I submit to you that the power of the Senate in total must be identical to the present power the Senate enjoys as it relates to constitutional amendments. In a nutshell, if you accept this proposition, it means that an elected body must have unequivocal authority over an appointed body and that the federal government must be sovereign over matters of exclusive federal jurisdiction.

1350

I ask perhaps a rhetorical question: Who could possibly disagree with this proposal? We know it is not Quebec; Quebec will not disagree with that. They were not the ones who came up with the brilliant idea on Senate reform to begin with. Perhaps the only people who might oppose it are some of the western premiers, but I submit that it is worth putting to them until there is full Senate reform.

If you do not have it, as Professor Hogg even suggests, because of unanimity you may have for eternity a provincially selected Senate which will have absolute veto power over matters of exclusive federal jurisdiction. If the supporters of the Meech Lake accord are right--that it is to be a more activist Senate--then one must look very carefully at what happened in Australia in 1976.

I would now like to turn to the Supreme Court of Canada appointments. The amendments relating to the Supreme Court of Canada contain a built-in powder keg which entrenches into our Constitution a mechanism that has a real possibility of questioning the very constitutional validity of the Supreme Court of Canada itself. As you know, under section 6 of the accord, the proposed subsection 101 B(2) of the Constitution Act, at least three judges of



the Supreme Court of Canada must be appointed from Quebec. Between 1976 and 1985, when a separatist government was in power in Quebec, the federal government appointed two justices to the Supreme Court of Canada: Mr. Justice Lamer and Mr. Justice Chouinard.

What would have happened if Meech Lake were in place between 1976 and 1985? What would a government committed to the dismemberment of Canada, to the destruction of Canada have done if Meech Lake were the law of the land? First of all, they could have done absolutely nothing--made no appointments and put no names forward. Second, they could have continually put forward names of known separatists who would have been entirely unacceptable to the federal government. In either case, we would have had a perpetual vacancy in the highest court in the land.

However, the accord itself states that there shall--I emphasize the word "shall"--be three judges from Quebec. In other words, without this constitutional requirement being fulfilled, the Supreme Court of Canada is no longer constitutionally constituted. A separatist government in Quebec would be free to disobey and ignore any decision from the Supreme Court of Canada because the court itself would not have complied with the provision of the Constitution itself, which is three judges from Quebec.

I submit that the first intelligent idea contained in this aspect of the Meech Lake accord is to provide a mechanism in our Constitution that potentially creates the crisis in the first place. I do not think anybody in this room can say: "Well, we had a separatist government in Quebec between 1976 and 1985. That was an aberration"--a rather long aberration, almost a decade--"and it will never happen again in the future." I do not think anyone can suggest that. So you have to ask yourself in your deliberations--because this is rather long-term; this is not a simple act of the Legislature or Parliament but a Constitution--what would happen if another separatist government were in power? As I say, we have a Constitution that creates a mechanism for this crisis to occur in the first place.

The second, I submit, brilliant idea, which I say sarcastically, is that we demand unanimity with respect to changing the Constitution regarding the Supreme Court of Canada so that the crisis is entrenched. The reason why it is entrenched is because the province creating the problem is not about to resolve it. That, of course, is the genius of unanimity. So I ask, who speaks for Canada?

Again, by way of a compromise solution--I say "compromise" because if I had my first choice, I believe the federal government should maintain its power over appointments of Supreme Court judges--there should be a mechanism set up at the various law societies and others, such as the recommendation the Canadian Bar Association has already put forward, for appointing Supreme Court judges. I think in the final analysis the constitutional authority should rest with the federal government.

Surely a simple solution to this aspect--I am not even questioning this aspect; I do in my brief, but for these submissions I do not even question the fact that the provinces may put forward a list of names and participate in the appointment system. I am just talking about this mechanism that may create a crisis if you have a government that does not want to co-operate.

With the other provinces, it is not such a problem. If the Prime Minister decided he wanted a judge from British Columbia and Mr. Vander Zalm did not put the name forward, then the Constitution allows him to go to



another province by saying, "Fine, if you do not want the appointment, we will go somewhere else," but with Quebec, you do not have that option. One could only imagine what would happen with a separatist government that refused to put names forward or continually put unacceptable names forward. There is absolutely nothing in the constitutional accord that resolves this crisis.

The solution is simple: Put a mechanism in the accord that would resolve this crisis. I am not sure what that mechanism would be, but it is clear there must be a mechanism to deal with it. Otherwise, the political consequences are just overwhelming, because you will have a separatist government. If a judgement comes down from the Supreme Court of Canada that is absent three judges from Quebec, a separatist government would say, "We are not going to listen to this because it is not constitutionally constituted."

I would now like to turn to opting out. I think the opting-out provisions of the accord should also be seen in the light of the overall impact of the constitutional reform contained in the accord as a whole. There is unquestionably, in my submission, a substantial shift in power away from the central government in favour of the provinces. If, for example, you are going to allow for a provincially selected Senate to have absolute veto power over matters of exclusive federal jurisdiction, then surely Ottawa must retain its power to spend its money as it deems appropriate. In order for creative federalism to work, there must be counterweights; there must be a balance.

As you know, under the Constitution, Ottawa has absolute jurisdiction over matters of direct taxation. Under section 91, class 3 of the Constitution Act, the power exercised by the federal government is done in its capacity as a national government, and thus the money belongs to all Canadians to be spent in the national interest. When you speak of opting out and the opting-out province having the right as a matter of law to financial compensation, that compensation would be coming from funds raised through Ottawa's exclusive jurisdiction under section 91, class 3 of the Constitution Act.

What is happening then is that Ottawa is losing control over how money raised for the national interest is to be spent. Canada can exist only if we have a strong central government with strong provinces. There must be a creative competitiveness between the various interests to keep us vibrant and imaginative. In order for Ottawa to fulfil its duty as a national government in the national interests of the people of Canada, it must have the power to use its financial resources to extract concessions from provinces for the national good of the country. We elect federal politicians to represent us on national issues. We do not elect provincial politicians to represent us on national issues.

To give you an example, only last week Premier Vander Zalm was talking of extracting fees from cancer patients and kidney patients for certain kinds of treatment. I think for one of the treatments, I am not sure which one, it was going to cost the patient \$300 a month extra. This runs contrary to every sacred principle of our national health care system in Canada. The federal government must have the power to tell someone like Premier Vander Zalm that what he is doing is offensive to the Canadian national spirit.

When it is a matter of exclusively provincial jurisdiction, I suspect Mr. Vander Zalm wants to do what he wants with provincial funds. That is fine. He can do what he wants. But when he is asking for federal funds in the opting-out clause, I submit the federal government must have the power to extract certain concessions. What Mr. Vander Zalm is doing is contrary to everything that Canada stands for on the issue of health care. The opting-out

provision in this regard seriously weakens the federal government's ability to act in the national interest.

1400

In addition, the opting-out clause is so ambiguous that it is effectively a total abdication, in my submission, of political responsibility because there is so much ambiguity in the terminology that the politicians are basically saying, "Leave it to the courts." Well, if I were to be selfish, I love politicians who do that. That keeps me in business. However, I believe the consequences are too great.

For example, the accord does not specify which level of government sets national objectives under the accord. The accord does not specify who determines whether the provincial plan meets national objectives. The accord does not specify whether "national objectives" means "standards." The accord does not define the difference between a provincial program and a provincial initiative, if any.

The accord does not provide a definition for the word "compatible." The accord does not provide criteria to determine the difference between being compatible with a provincial program, as distinct from a provincial initiative. The accord does not provide for a formula to determine whether a province can have an objective compatible with a national objective, but have a substantially different view as to the best means of achieving that objective.

I shall end my opening comments. I am leaving "distinct society" in the charter perhaps to some of your questions because, once I start on those two topics, there is no way I can keep to 20 minutes as an opening statement. So I will leave that. I hope you will read my brief and you will see that I advance my position on "distinct society" and the charter in some considerable detail and refer to certain very specific case law.

I shall end as I began, that there was a dream and it was a most precious dream, and I think we are now being told that this dream will remain just a dream. Those are my submissions.

Mr. Chairman: Thank you, and particularly, thank you for the emotion. We have had during our hearings a number of dry submissions, but also a number where people are expressing their beliefs, and after all, if a Constitution is to mean anything, it must presumably be reflecting feelings, views and a sense of what the country is all about, and it is very helpful to the committee to get a sense of that. I think that also provides a framework for a lot of the things you have mentioned here.

We have roughly around 225 briefs that have now been submitted and I can assure you we do read them all, so those areas that we do not get to cover in detail, we will most certainly go through and make sure we understand your points on those issues. We will start the questioning with Mr. Harris.

Mr. Harris: I want to ask you a few questions and to congratulate you on a thorough brief. I certainly do not disagree with your concerns. I may not agree entirely with everything you say about every aspect, but I want to ask you a few questions.

On page 4, at the top of the page, you say, "Respectfully, there is no electoral mandate to do this." Usually, whenever somebody does not like

something, they always say there is no electoral mandate for you to do this. Could you tell me what there is an electoral mandate to do? Are you saying there has to be another process for constitutional change, other than every Legislature, the Senate and the House of Commons unanimously agreeing?

Mr. Danson: The difficulty I have with the provinces agreeing--this is not perhaps the most appropriate forum to express that point of view for people who are provincial politicians--is that I believe that the Meech Lake constitutional accord so overwhelmingly favours and strengthens the constitutional powers of the provinces that it does not surprise me. For people who are elected to represent provincial interests to have a further legal arm to effect that interest, it would be a very attractive proposition. I would not think politicians at the provincial level would want to walk away from what I perceive as a significant increase in their powers.

I would agree with you that if you take day-to-day legislation, it is incumbent upon politicians to create new initiatives, and that even if they were not elected on those initiatives, they should pursue them. However, there comes a point where value judgements have to be made and you have to look to what, in fact, one is considering. In this case, you are talking about the Constitution of the country.

Mr. Harris: But the aspects that concern you are those that deal with provincial and federal powers and the resolving of where any of those come into conflict.

Mr. Danson: I go further than that. In my opening submissions, I just deal with Senate, Supreme Court of Canada and opting out. When you read my brief, I deal at some length with the whole unanimity provision, with the "distinct society" clause, and I am very concerned about the Charter of Rights and Freedoms. I simply submit, and perhaps a short answer to your question is that the Constitution of a country is so fundamental that it is something that ought to be dealt with in a national sense and debated in a national sense. I do not think the fact that we are having hearings necessarily reaches all the people, or that all the people are coming forward to express an opinion. It would seem to me that from 1968 onwards, Pierre Elliott Trudeau did campaign on constitutional issues, and except for, I suppose, a hiccup in 1979, was continually elected.

I cannot help but recall a long program on Cross-Canada Checkup once, in which this came out. Many people from the west were addressing the fact that they had never voted Liberal in their lives, had never liked Pierre Elliott Trudeau and would never vote for Pierre Elliott Trudeau; however, on this issue, they agreed with Pierre Elliott Trudeau. Because this issue is of such great national importance, not only for the present but for the future, and inasmuch as Pierre Elliott Trudeau put true proposals to the Canadian people for consideration, to be voted on, I think this is something that has to be done as well, and it has not been done.

Mr. Harris: I would totally disagree with just about everything you said.

Mr. Danson: You would not be the first.

Mr. Harris: My sense is that you are saying the provinces should not have a role in it, and that is fine; any role the provinces have in this is over and above what Trudeau gave us in the last round, or Davis gave us, because the provinces did not get, as I recall, to have significant



involvement in the last round at all, nor were there any hearings, nor were there any proposals put to the electorate. I guess I am asking you what the mechanism is that you would suggest for involvement. Are you suggesting that you have to campaign on this, on a certain issue?

You have not offered me an alternative. I do not know what the alternative is to having every legislature, the Senate, the House of Commons, certainly the leaders of all three parties at the national level. I do not know what else there is, other than another mechanism, perhaps a referendum. I do not know what that is, but by any measure, anything you have told me is that we are going to have an election on it and we have three leaders all saying this is a wonderful thing. I went through that once in this province on an issue of funding the school system and I found that people felt left out.

Mr. Danson: I would respond, first, by saying that I am not suggesting the provinces across Canada do not play a major role. Of course they must play a major role, particularly when you are talking about the division of powers. However, I would suggest that--certainly, with testifying before the House of Commons-Senate committee, I am not so sure how open that hearing was.

As I have indicated in my opening comments and as I argue in my brief, the problem with this is that I do not think we are getting a fair hearing. I think that basically the federal government and the provincial premiers are saying: "We support this. This is good, and if you can come and tell us a few things that may not be good, well, maybe we will consider it, but I doubt it." It seems a little bit like loaded dice. It seems to me that nowhere in any of this discussion has there been a discussion with the Canadian people as to what their vision of Canada is.

1410

I have found, on a personal level, discussing this with people who do not really know much about the Constitution but will engage in a discussion about it, that when they are truly educated as to the implications of the Meech Lake constitutional accord they are shocked.

I give a talk to the Rotary Club of Mississauga about four weeks ago. I was the only Liberal--I should not say this at this hearing--in the room. Everyone else was a strong Conservative. We started it with them being very much in favour of Meech Lake. I mean, people trust their governments, believe it or not, from time to time. I say this, and I hope I do not sound overly self-serving, but when it was over and they fully understood, their question was, "What can we do to stop this?"

I do not believe there has been a full discussion. I think this is the kind of thing people should bring out. We just went through a provincial election. I did not hear Meech Lake really being debated in the last provincial election. It is not an issue politicians want out in the open.

Mr. Harris: There was one party that tried to talk about it, but nobody wanted to listen. Let me also say that if I accepted your brief as being factual, I would be appalled and astounded too. So that does not surprise me. Let me ask you a couple of specifics. The "distinct society clause," on page 7, "will provide for a constitutional mechanism which, over time, will allow Quebec, step by step, to promote its distinct identity right

out of Confederation." First of all, that assumes they want out. If they want out, should we not let them out?

Mr. Danson: If they want out, I suppose the question is, in what context? If you are talking about a full, open democratic election where the people of Quebec do not want to have any part of Canada, I do not know the answer to that. I suppose one has to listen to the democratic process. My sense is that you would have a small but vocal minority in Quebec who would talk about separation. To me, that is too hypothetical.

I believe that what you have, though, is a mechanism being set up that will allow Quebec, piece by piece, to keep passing various legislation pursuant to its obligation under the Meech Lake constitutional accord not only to preserve, but also to promote its "distinct society." The consequences of that will be significant.

Mr. Harris: Can you think of anything that we can do to keep a province in that consistently, over a period of time, will use any devious method, as you suggest, over anything to work out a way to get itself out? Many people from Quebec argue that the fastest way out is to turn this down. Others, like you, have said the long way out is to turn this down. If I am faced with a fast way out or a chance, maybe this is better than the fast way out if I want to keep Quebec in Canada and want to keep Canada together. I sense those are the options I have been presented with on this issue.

Mr. Danson: My short response to that is that I do not accept it. I do not think the majority of Quebecers want out. I do not think that rejecting this means they are out. There are alternatives. For example, I articulated at some length in my brief what the "distinct society" clause means. If, on the one hand, it means what supporters of the accord say, that it is merely a formality, that it represents an historical social fact, then I do not have too much problem with "distinct society," if that is what it means. But if that is what it means--I do not know what the other constitutional lawyers are telling you, but I do not think I am the only constitutional lawyer to say this--then it should be in the preamble because that is what preambles are for. You do not put it in the body of the claim.

When you look at some of the statements that are made by Quebec politicians as to whether it is a mere formality, I think the Prime Minister has put a lot of people in a political straitjacket because they have created a political mood that if you reject it, you are anti-Quebec. That is quite unfortunate.

For example, I will just give you a couple of quotes as to what the "distinct society" clause means. Robert Bourassa said in the National Assembly: "While the French language is a fundamental characteristic of Quebec's uniqueness, it is not the sole characteristic relevant to the 'distinct society' clause. There are other aspects such as Quebec's culture and its institutions, whether political, economic or judicial. The 'distinct society' clause will allow Quebec to be confirmed as a French society." Hardly. When you talk about culture and institutions, political, economic and judicial, you are not talking about a formality.

He also said, "English rights will no longer be a constituent part of Quebec, but purely a limit on the power to be exercised by the National Assembly." One can go on and on. I have about 15 of them, depending on the questions that were being asked of the statements that were made by René Lévesque.

If you go to some of the separatists like Claude Morin, he says: "The 'distinct society' clause is a significant clause and should be exploited to the utmost. This would lead to results that provincial premiers who signed the accord would not be very happy with." He also said, "If the recognition of Quebec as a distinct society turns out not to mean anything, Quebecers will realize it and begin fighting again."

Mr. Harris: If you were a separatist in Quebec and a politician and you wanted to make a public statement, would you not want to make one that you would be a winner no matter what happens? I do not attribute any of those statements by any of the people you have quoted to anything more than politics in their own province.

Mr. Danson: Then I will perhaps leave you with one more quote.

Mr. Harris: It is what the Supreme Court decides.

Mr. Danson: That is right.

Mr. Harris: That is what is going to happen.

Mr. Danson: One thing that is for sure in constitutional law, as Mr. Bourassa said before as he introduced the motion for the Quebec National Assembly to approve Meech Lake, "According to jurisprudence, the statements, the intentions of the person writing the Constitution can be very useful in the interpretation that can be made by the courts."

What Bourassa said was that we know that the courts, in situations like this, especially when you get into ambiguity in constitutional matters, will look to what the politicians happen to say. So what Bourassa does, he talks about all these comments of how strong the "distinct society" clause is, that it is not a mere formality, that it is going to bring about fundamental change, which I suggest to you over time could in fact affect Ottawa's exclusive jurisdiction over communication, cable television, radio and so forth. Even the Quebec politicians recognize that and so state in the National Assembly.

Miss Roberts: Supplementary to that, you have the tendency to believe what Mr. Bourassa says when he says what you have just quoted, but you do not believe him when he says that if it does not pass, we have some very hard constitutional problems. So you have two sides of it. You believe him on one point but not on the other.

I understand what you say, that the Supreme Court will look at the intent and from such and such, but might it not also look at the intent of the Premier saying, "The reason we are accepting this is to stay in Canada and not for anything else"? They will have to balance those two, because Bourassa is saying one thing on one side and one thing on the other. You accept him for one thing but you do not accept him for the other. I think Mr. Harris's point is that we are between two statements.

My question supplementary to that is, what would you do to bring Quebec back into this particular Confederation as we see it today?

Mr. Danson: First of all, fundamentally, you have to ask yourself a question. Here we have 11 people at a table deciding on a new Constitution for Canada, and after it is signed, we find out that they have different interpretations. So it must be alarming to know that people come out of the



same room, put their signature to the same agreement and have a disagreement as to what it means.

Miss Roberts: As a lawyer, you find that alarming?

Mr. Danson: As a lawyer, I think it is terrific. It keeps me in business.

Miss Roberts: This is how it usually happens.

Mr. Danson: I think the problem here is that the differences of opinion as to what it means are so fundamental that the full solution is to reconvene another first ministers' conference and say, "Listen, every premier has a different interpretation of what this means." To use a legal term, we are not ad idem, we are not of one mind as to what this means. When that happens, I think politicians have a duty and a responsibility not to sit back and say: "Boy, there is so much ambiguity, there is so much confusion, we will leave it to the courts. We will hold our breath and hope that it works and they come up with something good." My first response to you is that we clear up the ambiguities in that sense.

1420

Second, I think that you deal with "distinct society" by making it clear that--the "distinct society" clause, in and of itself, I suppose I could live with, if it was clear that it was not superior to the Charter of Rights and Freedoms. I think a simple statement that the Charter of Rights and Freedoms is paramount might go a long way in dealing with the "distinct society" clause.

I have already given you my suggestions on the Senate, which I think is absolutely critical. I think the comment on clearing up the mechanism in the Supreme Court is absolutely critical.

I think that clearing up the language in the opting-out clause is important. I suppose I could argue that I am not saying you should scrap it, although you would perhaps look at the amendments and say that if you go with one, it is going to unravel. I suspect that the biggest problem you will have when you sit to determine what your views are of the various submissions is, "Will this unravel the whole deal?" I think there are such substantial areas for improvement that it is simply not enough to say: "This is the best we can do for now. We'll deal with it in the future."

I suppose in another sense I would say to you, "You can have this constitutional accord just the way it is, but eliminate unanimity, so at least someone in the future will have the option of not having their hands tied to what politicians do today."

As I say, not tomorrow, not the next day, but five, 10 or 15 years from now, what is going to happen when you do have the crisis in the Senate because you cannot have change because of unanimity? What are you going to do when you have a crisis in the Supreme Court of Canada? If you want a quick route to separation, try a Supreme Court of Canada judgement that deals with the rights of Quebecers when you do not have three judges from Quebec.

Miss Roberts: Before you go on, my question to you was, what would you do to get Quebec in? Suppose Meech Lake disappears. Quebec is still on the outside. Mr. Trudeau went through, and we completed our Charter of Rights and Freedoms in 1982. The question that is put to us is, how do we get Quebec in? That is what I am asking you.

I am not asking you to look at the Meech Lake accord. How do we get Quebec in? What steps do you suggest and how can we do it in a process that is going to be such that it will not be torn apart again? We do not have that process anywhere in our Constitution and we do not want to do it the way Trudeau did either, because that was not perhaps the freest way possible.

Mr. Danson: He certainly continually got re-elected.

Miss Roberts: It does not mean it was the proper process.

Mr. Danson: Perhaps. If I could answer your question off the top of my head, as to what is the alternative for getting Quebec in, I suppose what I would say is that one should implement the changes to the accord which I think are important and put it to the people of Quebec to see if they are going to reject it and, if necessary, perhaps have a referendum in Quebec.

Miss Roberts: Why put it just to the people of Quebec? It is all over. Everybody in Canada has been--

Mr. Danson: You asked me specifically about getting Quebec in, but if you are going to have a referendum, it would have to be for all of Canada.

Miss Roberts: OK. Thank you.

Mr. Allen: I appreciate the care and preparation that have gone into the brief Mr. Danson has brought before us. There is certainly a consistency in his line of argument and his presentation this afternoon.

To be frank, my principle concern is a tendency to overextend your language, Mr. Danson. For example, I note that on page 27 you say, "When we see the accord in its totality"--I presume that is the accord as it stands now--"with provincial governments selecting senators and provincial governments appointing Supreme Court judges and provinces opting out of national programs with full federal financial compensation, we see that Canada's destiny is clearly being threatened."

I submit to you that you are fudging every one of your phrases; that in point of fact the provinces, while they may be nominating, will not be simply appointing senators. There is option for refusal. Certainly in the accord as it stands there is no alteration in the central powers of the Senate vis-à-vis the House of Commons, perhaps only with respect to its participation in unanimity judgements on amendments regarding federal institutions, where it, along with the Commons, has some role to play. So I submit that you have exaggerated the terms of the agreement there.

With regard to appointing Supreme Court of Canada judges, you, of course, would have to realize, as you have said yourself in other points in your comments this afternoon, that that is not in fact the way it will happen. There is the possibility of federal governments not accepting nominations.

With regard to the opting out of national programs with full federal financial compensation, that of course is only with respect to exclusive jurisdictional territory of the provinces, but even there, there is no full compensation unless there is some kind of provincial proposal that is at the least compatible with federal programs. Some of the more recent things we have been hearing around "national objectives" indicate that it is a broader term than some people seem to want to say it is--in comparison, on the other hand, to "national standards."

When I look on page 34, you suggest that the "distinct society" section "transfers extensive powers to the Quebec government." By powers, I understand you to mean those that are in the division of powers in sections 91 and 92 essentially, and there is no transfer. In fact, there is an explicit statement to the contrary. I could go on. You say it "freezes for all time Quebec's distinctiveness," but since there is no definition of "distinctiveness," it is not quite sure what is frozen and, in the course of judicial interpretation, that may be elaborated in many interesting directions.

When it comes to the conclusion you make that we now, in the wake of Meech Lake, if it is passed, will have two nations and two languages, that seems, at least on the face of it, to ride squarely opposed to the parts of section 2 which tell us that all levels of government, federal and provincial, have an obligation to maintain the linguistic dualism of the nation. There is no evidence in the accord that distinctive society simply means promoting finally the French-language character of Quebec until it is totally and completely French and everybody else is gone from that province.

Perhaps you would respond to my principle observation, that you seem to be running your language on ahead of the terms of the accord and presenting conclusions and speculations rather than what one can reasonably infer from the terms of the accord itself.

Mr. Danson: My first response is that I disagree with you.

Mr. Allen: Obviously, or you would not have written it the way you did.

Mr. Danson: Yes. When you talk about the Senate, for example, I, for one, take the people who support Meech Lake--there will be the same problem with respect to Supreme Court appointments: While there is a mechanism for those who are selected to be turned down, the fact of the matter is that the concept behind it is to make the Senate a more provincially activist body. That is what they say they want the Senate to be; that is the direction in which the Senate is to go.

If you take that at face value, the fact of the matter is that through the process of time--and I cannot speculate as to what future Senate reform may be in order for Canada--what I argue in my paper is that you are not going to get any kind of meaningful Senate reform on which you are going to get unanimity.

If you look at this in and of itself, and taking the supporters' view that you will have a more provincially activist Senate which, as Professor Hogg says, if you do not get unanimity for constitutional change, will turn into a House of the Provinces; then the fact of the matter is, whether you like it or not in constitutional terms, it will be a provincially selected Senate that will have absolute veto power over matters of exclusive federal jurisdiction.

You may say to me, "But the constitutional powers are not significantly different from what the Senate has today." My answer to that is that it may be true, with the difference that it will change its orientation from a federal orientation to a provincial orientation. If the supporters of the Meech Lake constitutional accord are saying that the whole purpose of this change to the Senate is to make it more activist, because the present Senate is not activist--it has been a little more activist since Mulroney came to power--I am not saying that is such a healthy thing, I am not even defending that, but



the fact of the matter is that over a period of time you are going to find that the counterweights which are so critical for a creative federalism to work would be eliminated.

1430

If you think I am overextending the words on the Senate, I disagree with you. The fact of the matter is that the provinces can put forward names for selection. Ottawa cannot make that decision unilaterally. With respect to the Supreme Court of Canada, I submit it is the same thing. You say I have perhaps extended the language for appointments to the Supreme Court of Canada. I do not know if it is for me to ask you questions, but how do you deal with a situation if you have a separatist government in Quebec and, let us say, there are three openings on the Supreme Court of Canada from Quebec?

If there is an absolute constitutional requirement to fulfil those vacancies and you have a separatist government, or Jacques Parizeau is in power and he says: "I do not want anything better than to separate from Canada. How can I really throw a monkey-wrench into Canadian federalism? I am just not going to put any names forward," then you have no mechanism to resolve it. That is something which, I submit to you with respect, is mind-boggling. Surely there must be a mechanism to resolve that.

About the transfer of power, you say there is really no transfer of power. I agree with you because I have won cases in court that I should not have won and I have lost cases that I should not have lost, which suggests to me that anything goes in court. It may be that all the fears we advocate will be resolved by the courts, but maybe not. If you have two intelligent positions that can be advocated for a particular interpretation of any aspect of Meech Lake, all you can say with certainty is that the courts may go one way or they may go the other way. I am suggesting that going the other way will be disastrous for Canada and it has to be cleaned up.

On the transfer of power, the fact of the matter is there are so many areas in constitutional law that when you start reading the division of power cases it is mind-boggling, perhaps like splitting hairs, to know which way the court is going to rule. Is it something that really is in pith and substance a matter within the exclusive jurisdiction of the provinces or is it really in pith and substance something within the exclusive jurisdiction of the feds? It is amazing the kinds of things that sway the courts either way.

I suggest that when you look at the case law on the division of powers and you see the problems the courts perhaps have in defining those things that are on the line--and so many are on the line--what is going to tip the balance one way or the other, for example, with something like a "distinct society" clause? If the "distinct society" clause is going to mean anything, and all the quotes that I referred to in my opening and that I have in my brief say it means something significant, it has to go to culture, and if you go to culture you have to go to communications. All of a sudden, they may be passing laws that are dealing with communications, which is something Ottawa has exclusive jurisdiction over.

But then, if they are promoting their distinct society, which is a constitutionally guaranteed right, it may be enough to tilt it the other way. In terms of the transfer of powers, it is not so simple as to look at section 91 and section 92 and see which way it is going to go. The "distinct society" clause will tilt the balance, in my submission, to a very large degree.

The other concern is that if it does not--this really is a

catch-22--then you are left with a situation as indicated in the quote I read from Claude Morin. If it does not mean anything, if it does not give us real powers and if it does not make Quebec different in substantive legislative ways, there is going to be an explosion. Unfortunately, I think we have created a political climate where in resolving this people are between a rock and a hard place. I do not know if that answers your question but I do not think it is fair to say it is stretching the language.

Mr. Allen: In part at least, it confirms it because when you start talking about the Senate, you always want to talk about the provisions in the accord in the light of those who support Senate reform; in other words, principally Mr. Getty, I presume, Mr. Vander Zalm and those who are looking for an elected provincial Senate, the triple-E idea and all the rest of that stuff. Quite frankly, that may be never be in the works. Who knows? That is just very speculative. That is what I mean by overextending the language to make it look as though what is here is consequential and immediate on the passage of the accord, and indeed that may never be the case.

Mr. Danson: Does unanimity not confirm that?

Mr. Allen: With all due respect, when you talk about transferring extensive powers in this language, you are not talking about what you then said later, which is the sort of subtle, long-term, down-the-road effect on nicely balanced cases where things might go one way or the other. It would be ultimately perhaps, because of the "distinct society" clause, that the case would fall over in one direction and somewhat slightly at that point amplify Quebec's powers in a de facto, precedent-setting way rather than any actual transfer of sections in the Constitution.

I submit to you that if that is the case and the case is so finely balanced, perhaps that is the way it ought to fall in those circumstances, if falling in the other direction were to impact adversely on the distinct character of Quebec society, since no one has really yet proved to me that what it meant by that phrase is something that is particularly menacing given all the fullness that one can read into it. Again, you really have not reassured me.

Let me submit to you that what Meech Lake does try to address is a series of issues that have been around the federal-provincial agenda for a long, long time. Mr. Trudeau himself, for example, in one notable stab at it in 1978, proposed a white paper which would have included the participation of the provinces in the appointment of Supreme Court judges. He would have guaranteed four places, not three, to Quebec.

By the way, presumably not all those judges are going to die at once, so even though Mr. Parizeau, in a short term in office, might not want to make an appointment, there would always be other justices from Quebec who would be present and able to represent that legal tradition. I am not sure the impasse would be nearly as great as you imagine.

There would also be a replacement of the Senate by a House of Confederation, of which half of the appointments would be directly and fully provincial. That, taken together with the congruence of the spending power arrangements and the shared-cost programming stuff in Meech Lake, which comes right out of the Trudeau era and the practice of that regime, when you come right down to it, unless you are really splitting hairs, is something that is an attempt to resolve those issues in very similar fashion.

I find it very difficult to understand why you and Mr. Trudeau and

others are linked together in opposition to something which is so congruent with many of the initiatives that were proposed, at one time or another, in the course of those years.

Mr. Danson: The simple answer is that it would very unfair to take the proposals to constitutional amendment by Trudeau over the years, one by one, and--

Mr. Allen: He did it himself in one white paper.

Mr. Danson: --put them all together. The other aspect of Trudeau's constitutional reform package was, "We will give you something; you have to give us something back." Trudeau has always talked of creative federalism, and there have to be counterweights. In order for it to work, you have to have a strong federal government and you have to have strong provinces.

But if you look at this whole Meech Lake constitutional accord, you cannot point to a single clause in this document that gives anything to Ottawa as distinct from the substantial powers that the provinces are gaining. There is not one. My understanding of history and Pierre Trudeau on constitutional reform is that is not the way he negotiated. It is simply not good enough to say: "I propose this, this and this. Now you come back and tell me what you're prepared to give." There have to be counterweights. There are no counterweights here.

Mr. Allen: There is clear recognition of spending power. When you are talking about counterweights, this is very much a counterweighted document. I would have thought that Mr. Trudeau, who believes in countervailing powers and so on, would have thought this was a wonderful way to go, philosophically.

Mr. Chairman: I am just a bit mindful of the time this afternoon and the number of witnesses. I think this has been a very useful exchange, but I suspect that the points are clear. You have raised so many issues, and there are a whole host of other ones, Mr. Danson, that I wish we could take even more time, particularly on the questions around the sense of national identity and how we find the balances between provincial and federal roles. I am sorry that we cannot continue to explore those areas.

1440

I think you have certainly set out a very cohesive view of the accord. I think that comes through in your paper and as well, of course, in the statement that you made. We thank you very much for coming this afternoon and sharing those thoughts with us.

If I could call our next witness, Professor Michael Bliss, professor of Canadian history at the University of Toronto. Professor Bliss, we want to thank you for joining us this afternoon and perhaps offering some constitutional insulin to our deliberations. We have received a copy of your submission, of course, and everyone has a copy of your statement. If I might just ask you to proceed with your statement, we will follow up with questions.

DR. MICHAEL BLISS

Dr. Bliss: Thank you, Mr. Chairman, and thank you for giving me the opportunity to address the committee. You have my 17-page brief, which I will not try to summarize or regurgitate. I will deal with any questions you have



from it. But I have prepared this supplementary statement to focus on what I think are key issues.

I am sure you have now been thoroughly immersed in people's concerns about the process that gave us Meech Lake. You have heard so much critical testimony, including testimony from Mr. Danson immediately preceding me, that I do not need to repeat the points in my brief.

I think we now realize that this agreement is a wild constitutional leap in the dark for Canada, one that possibly menaces the future of our country and one that alarms most thinking Canadians.

I think the testimony before your committee is indicating that the preponderance of informed opinion in this country has turned hostile to the Meech Lake accord. You have heard from the accord's remaining supporters, including some of whom were its paid perpetrators, but surely you have found the message they have given you unsatisfactory. Even as you were being given Pollyanna-like assurances to the effect that the courts would not take the language of Meech Lake seriously, the Supreme Court of Canada was busy striking down Parliament's abortion legislation, showing how very active it is going to be in taking its new constitutional role to the fullest extent. I think the vague but loaded language of Meech Lake invites the Supreme Court to decision-making which may change this country beyond recognition, and in the light of the court's record, only deeply foolish people would presume to predict the outcome.

It seems to me that you, as responsible legislators, have to discount the hypothetical fancies of the constitutional "experts" who presume to do the Supreme Court's job for it. In other words, you do not know what it is going to decide.

I hope you will also question the motives and the intellectual integrity of those who assure you in one breath that the Charter of Rights and Freedoms is safeguarded by the accord and then, in the next breath, disagree with the commonsense suggestion of making that safeguard explicit in an amended accord. When you are told that the accord cannot be reopened to protect the charter, you are really being told that some of the first ministers will never agree to such protections; in other words, that some of its signatories do believe the accord will override the charter.

The other signatories, including the Premier (Mr. Peterson), are endorsing these views when they accept the argument that the accord should not be opened. In this sense, no matter what he says, Premier David Peterson has endorsed a process and, in fact, is deeply complicit in a process, that plays fast and loose with the Canadian people's rights and freedoms. To many of us, the failure to face up to the implications of what the Premier has done, and do something about them, is simply shameful.

The committee surely now realizes the fraudulence of the argument that the accord should be passed as it stands and then reconsidered in the second round of discussions. The problem is that, once the deed is done, it cannot be undone, and if the unanimity required to change the accord now is impossible to achieve, then it will also be just as impossible, perhaps more so, after it is passed. I hope that as responsible legislators your report will reject, with the contempt it deserves, the argument that we should attempt to let the patient die and then try to cure him.

I also urge you to reject utterly the last remaining argument of the

accord's supporters, an argument used frequently by the Premier himself and one that ought to be deeply disturbing to all thoughtful Canadians. This is the argument that the accord is an accomplished fact, that Quebec has accepted it and that it would gravely damage national unity for the rest of Canada to turn its back on Quebec at this stage.

This argument has many things wrong with it. To cite only three: first, it makes a farce of what we are doing today, for it implies that nothing mattered after Mr. Peterson and the other ministers entered into their agreement at Meech Lake, their literal conspiracy to change the Constitution. We should forget about the democratic process, forget about informed comment and debate and just do what the Premier, in his infinite constitutional wisdom, tells us is right. By implication, we should treat you, our elected members, as mindless ciphers whose views can be ignored in advance as the Premier has told us he will ignore them.

Secondly, the argument implies that Canadians cannot say no to Quebec, although the Quebec government did exactly that to the rest of Canada in 1971 in rejecting the Victoria accord and then 11 years later in rejecting the 1982 pact. If we cannot say no to each other occasionally as Canadians and then go back to the table and resume negotiations another day, do we really have the basis for one country?

Thirdly, this is just crude political blackmail. It is a tactic that the Premier of Ontario seems to have both surrendered to and endorsed and one that ought to cause all of us to ask hard questions about Canadian democracy and our public responsibilities.

Finally, I have been trying hard to think through Constitution-making and legislators' responsibilities, and the notion that we are accountable to history for the position we take on great issues such as the shaping of our Constitution. I do not think it is necessary to spell these out, because I am sure you are thinking about them and you are asking yourselves hard questions about principle and conscience and perhaps especially about party discipline, and about the public's concern that our politicians demonstrate an independence and integrity that are above question.

I know you are reflecting on the grave responsibilities of this committee. It seems to me this is possibly the most important committee Ontario has struck in its 120-year history. I think you are being asked to assess constitutional proposals which many experts believe could lead to the destruction of the country. If you endorse them, many of us think you will be anathematized in the history books as shortsighted men and women who assisted in the destruction of your country. I am using those words with a full understanding of their seriousness and meaning.

The glory of Canada's federal system is that in 1867 we decided to recognize and celebrate our distinct societies by creating provinces and provincial governments, but in our diversity we also celebrated and enhanced our unity by creating a strong national government. This was a wonderfully delicate but flexible balance, one that has worked for more than a century to give Canadians and Ontarians peace, order, prosperity and good government.

Last May and June, the Premier of Ontario made a mistake in consenting to a series of proposals that will upset and destroy the historic Canadian balance. For the sake of your constituents today and tomorrow and for all of our children, I urge you to assist in undoing the error of Meech Lake.

Mr. Chairman: Thank you very much, Professor Bliss. As you note, we



have the fuller text which we received earlier, and it sets out your thoughts on a number of the specific issues. I think perhaps one of the things that is useful today, both in your opening statement and that of Mr. Danson before, is some strong feeling, which I think this debate obviously has engendered and indeed should because of the nature of the topic that is under discussion.

If I might just begin with one thought and question: Clearly, if we come to the conclusion that this is a bad deal, we have a responsibility to say it should be set aside, renegotiated, whatever. I think that is fair comment. One of the real problems in dealing with this accord or any other document that perhaps came to a committee in the way this has is that, having been accepted, we have to address this and I think we have to try to find a way of discussing factors, not in the sense of blackmail, but in trying to determine where do we go.

I think there is a legitimate question in that as legislators, if we were then to make proposals--because after our report, life goes on; so to a certain extent we are trying to look at the accord to determine, first of all, is the accord so flawed that it should be rejected? Is it that we perhaps feel it is something that we should support but with certain kinds of changes? But no matter what it is we are saying, we are also having to ask ourselves, where would we go? What would be that next step? The day after our report comes out the gentleman in the second floor at the east end is going to have to go somewhere, going to have to do something.

#### 1450

It is very difficult to determine what the reaction will be. We can speculate about reaction in Quebec in terms of what our position might be, but I think it does come back then to some fundamental issues where I sense that you and the previous witness, in terms of your vision and your view of Canada, I do not think can accept what it seems to me is one of the fundamental requests that has come from Quebec, this recognition of a distinct society.

I wonder if you could elaborate a bit on that issue and the extent to which you feel there would be a way to take into account Quebec's request, demand, call it what you will, for some recognition of its distinctiveness, in terms of how our committee, perhaps Manitoba's, New Brunswick's, the Senate, then handles that? How do we deal with that in a way that it lets them think we are serious?

Dr. Bliss: Mr. Chairman, you have raised several questions on the overall view of what you ought to do. I think my view is that you ought to take the Premier at his word and say that you have found this accord so seriously and grievously flawed that it has to be reconsidered. I believe the Premier gave you that opening. There are really major errors, such that it would be grossly irresponsible for this province to endorse it.

On the specific question of the recognition of Quebec's distinctiveness, I appreciate your concern and I appreciate Quebec's concern. One reason why I feel strongly and deeply about this is that I feel we have forgotten the ABCs of Canadian federalism. It is extraordinary in this country that we understand our federal system so badly. We have recognized the distinct society of Quebec. That is what federalism is about. That is why there is a province of Quebec. We have recognized our distinct communities across the country, and we are distinct; Newfoundland is as distinct as Quebec is. We have recognized our linguistic differences in other kinds of ways.

I am satisfied to believe that if we Canadians understood our country



and its history, we would realize that we do not have a problem with distinctiveness. I do not believe there was a problem with Quebec that required the urgency that Meech Lake seemed to have created. There was no tremendous popular demand for a constitutional settlement welling up from the Quebec people after 1982.

Given, however, that this is water under the bridge and that something has to be done, I believe the Quebec government originally asked that the distinctiveness of Quebec be recognized in the preamble to the Constitution. They got rather more than they asked for. They got the recognition of a distinct society as a principle on which the whole Constitution would be interpreted, creating the problem of the uncertainty in the decisions the court will make.

Possibly we could go back to recognizing everybody's distinctiveness in a preamble--Quebec's distinctiveness, Newfoundland's--on the notion that we are a nation of distinct societies, which I deeply believe. Maybe our Constitution should call us a community of communities.

Mr. Chairman: A community of distinct societies.

Dr. Bliss: Yes.

Mr. Breagh: I want to pursue a couple of areas with you. First, I want to say how much I appreciate that you took 17 pages and put them into five. As a footnote to others who may come and see us later on, I think most of us would be really grateful if people would do that. We have been Meech Laked to death.

Most of us who have sat through this process, I think it is fair to say, reject those who get hysterical on either side of the argument. But you are going to have to do something pretty spectacular to show us something we have not seen so far on either side of the argument.

What I want to pursue with you a little bit is where we go from here. I think any one of us could sit down and put together a short list of things that we think are, if not flaws, things which have not been done quite the way they ought to have been done. Sooner or later we are going to rectify those things, so we might just as well do that now. Most of us, too, although we listen to the premiers, say that this deal is done, that there will be no more dealing and that it is take-it-or-leave-it time. We are somewhat amused then to read in the newspaper that the government of Quebec is indeed talking to the government of New Brunswick, and somewhere our friend Brian has his nose stuck in it too. It continues to be business in the back rooms as usual.

For me, the single most important thing we have to do now is to get this on a little firmer ground, to put a little sanity in the process so that I am not embarrassed when I explain to my constituents how this deal was put together, so that I can point out to them that there is a reasonably legit public process for constitutional change in this country.

I wonder how that sits with you, as I sense that our greater challenge here is to say: "Enough of this. It is not suitable now to do this by means of executive federalism"--whatever that is--"If we are going to have these folks sit down every year and talk about the Constitution, this is what they will talk about. This is the process whereby we arrive at constitutional amendments. This is the way in which we deal with concerns that various groups have brought before us."

I want to get your perception on how important that process is. Is it enough to say, "Do these half-dozen things"--we have seen the list of those--"and put in place a process that people will recognize and really feel is legitimate, and we can proceed"?

Dr. Bliss: Not if you are saying that we should pass the accord and then get a new process in place, because I can circle back to say that you are asking us to let the patient die and then develop some cures. That is what the federal committee concluded. It seems to me that the problem is Meech Lake now, and if you let it go through, all of your suggestions for a new process will be redesigning a barn door after the horses have slipped.

We could then argue about a process, but my view is that we ought to continue the political process we are in now. This committee, in its wisdom, ought to suggest to the Premier that he ought not to bring these resolutions before the Legislature and that the responsible second thoughts of the province will become a factor in the political equation that is in fact causing Quebec to begin to bend a little bit and Mr. Mulroney to become concerned. In effect, it is causing the kind of responsible reconsideration that ought to be part of our political process. It seems to me that this is natural and Ontario ought to further it. Indeed, Ontario is the province that can, and in my view, should do it.

If you want to talk about processes for constitutional reform after Meech Lake, I do not think we need annual constitutional conferences. I am convinced that is trivialized constitution-making. Constitution-making is something, as we know from most countries' history, that you do not do lightly. You do not have a regular or a commonly used process. We spend too much time in this country on the Constitution. I dislike it as much as you do.

Mr. Breaugh: No, you do not.

Dr. Bliss: Yes, I do. Indeed, part of our problem with Meech Lake was the sense we developed that you can have a constitutional conference and open the Constitution at the drop of a hat. That is the last thing you want to do, I think.

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Mr. Breaugh: OK. To pursue it just a bit, the one thing we do have is that there is no deal that has to be signed tomorrow morning. There are a couple of years left before it is slated for approval. We do have the time to go through this committee process, however difficult it may be. There is a need to do it and that is why we are elected, so we are here doing this.

If I were to give you my half-dozen concerns, they do not vary a great deal from what, it is reported in the Toronto Star, Frank McKenna has to worry about on this matter. I think that as a consensus of this committee, whether we all buy it or not, those are the concerns that have been brought before the committee in the course of our hearings. It is not hard to identify the things which should be done. Some groups have been so good as to actually put together words that could be used as companion resolutions. In their view, that would resolve their problems. The combination of what you do to correct what is being suggested in Meech Lake is not that difficult to come up with.

The nagging suspicion I have is akin to what you talked about a little bit. When you put this package together, although individually it seems fixable, to put it in those Oshawa terms, when you put it all together there

is another ingredient that comes into play here: The rules change substantively, so that by the time that final ratification vote occurs, I am a little unhappy that it is not fixable after that point.

In other words, I could refer things to the Supreme Court of Canada to determine whether or not the Charter of Rights is impacted by the Meech Lake accord and get the decision I want, maybe. I could pass companion resolutions across the country that would resolve some of the concerns of the Northwest Territories, the Yukon, the aboriginal groups and things like that. We could do some wording changes, a few deletions. In other words, you could go to work on it in the way legislative committees normally do. You could do that, but I am a little concerned that at the end of the day, if we all ratify this thing as is, none of us will be able to undo it. That is why the process is incredibly important to me. I have to see that we are back on to more normal, recognizable, democratic terms in this country to solve problems which may come out of this.

Dr. Bliss: I entirely agree with you. The problem is the way in which our political processes seem to have been--we all have been most trapped by the way this was done. I have used the term "conspiracy" to describe what happened at Meech Lake, and I use that advisedly. The 11 first ministers made an agreement not to change it. They used their assurance of the discipline of the party system as the kind of cement that would give them credibility.

Now one has been turfed out of office, another has resigned and it may be starting to come unstuck, but it seems to me that in the way they have set the process it leads to terrible dilemmas if you are a committee, because I know your committee has seen the flaws in the Meech Lake accord. I cannot believe your committee could possibly give a blanket endorsement of this, and more and more this is becoming the case, but we have also heard from the Premier that what you say does not matter very much.

That is why, in my penultimate paragraph, I meditate on what your responsibilities must be as legislators. It seems to me that ultimately a process like this, which has been premised on iron party discipline, can only be stopped by members having the independence, the concern for principle and the concern for the province and the country that will cause them to break party discipline. I do think it eventually comes down to that. It comes down to the independence of committees. It comes down to the intellectual and possibly the moral independence of members of parliament who will not find that their views on the future of the country are told to them by their party leader.

Mr. Breaugh: OK. At the risk of being intellectual and moral, I thank you.

Miss Roberts: You will never be ?? .

Mr. Chairman: We appreciate having the problem put in such a simple manner. I will move to Mr. Harris and we will catch Mr. Allen when he gets back.

Mr. Harris: In your written brief to us, you ask whether the "no" side's promises to Quebec in the 1980 referendum were left unfulfilled. You say, not according to Quebecers who played the leading role in that campaign and actually made the promises, Mr. Trudeau and his colleagues. We have heard from a number who feel that until Meech Lake-Langevin they were unfulfilled. We have heard from a number of Liberals like Pepin and Kaplan who said Trudeau would have been delighted to grab this deal had it been offered to him.



You have brought out the point that "distinct society" is now an interpretative clause, as opposed to in the preamble. From those who argue that this package the very least Quebec could have asked for, this package it has accepted, and argue that were this available, there would not be any Meech Lake, it would have been done long ago, Trudeau would have been delighted to have it, the one thing that appears to have happened is that they appear to have put this "distinct society" into the agreement as an interpretative clause.

If I accept their arguments, in my view we have to try to decide, is that the very least? In other words, we were told that all the other demands that were asked for constitutionally guaranteed all the things that the worriers tell us "distinct society" gives them, so this appears to have been the compromise. I do not know; I was not at the table. Does any of that sit well with you?

Dr. Bliss: Well, no. What really sits badly with me is the notion, which I heard earlier in the questioning of Mr. Danson, that people know Mr. Trudeau's mind better than he seems to, that people would say, "These are proposals Mr. Trudeau should have accepted; therefore, they are OK," when, as you know, Mr. Trudeau has explicitly condemned the agreement. It is so depressingly absurd to use Mr. Trudeau at some time in the past when you have the live Trudeau telling you what he thinks of it that it is--

Mr. Harris: You are assuming we have to accept the ultimate integrity of everybody who is speaking, and we have heard political leaders speak on all sides of this.

Dr. Bliss: I know.

Mr. Harris: For every Trudeau you quote, somebody quotes somebody else.

Dr. Bliss: But there is the real Trudeau, and especially Liberals might listen to the real Trudeau, who two days from now will be again saying what is on his mind. He will tell you, as he has explicitly, why the package is unacceptable.

I am going to give a two-hour lecture tonight at the University of Toronto on Mr. Trudeau's Prime Ministership. The first and basic principle that brought Mr. Trudeau into politics was to make all of Canada his country, to reject those people who believed Quebec was separate and should be more and more separate from the rest of Canada. The notion that the Meech Lake accord is in any way a fulfilment of Mr. Trudeau's aspirations in politics is mind-boggling. I just do not find it acceptable in the slightest.

On the recognition of the distinct society, we can go back to--if you want to do it symbolically, which is what many Quebecers say they want, a symbolic recognition, fine, do it symbolically. Do not do it in such a way that you invite the court to upset the balance of the Constitution, or set up a situation in which, as Mr. Danson said quite rightly, a separatist government could bring the country to paralysis. With the "distinct society" clause, can you imagine what Mr. Lévesque would have done to this country under the Meech Lake proposals?

Put it in symbolically. We can satisfy everybody symbolically. But do not put it in in such a way that you create the possibility of paralysing the country.

Mr. Harris: I guess you are assuming that if you put it in symbolically and do not do anything else for them, they will accept it.

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Dr. Bliss: If you turn it down now, there is going to be a lot of unhappiness. I would not minimize for a moment the consequences of a rejection of the accord. It may be that there will have to be another referendum in Quebec. Once those commitments were made at Meech Lake, they did change the thing, but it seems to me that the cost of accepting this is going to be worse than the cost of refighting it. That is a delicate calculation. I, as much as the next person, would like to see the Quebec question resolved and go away.

But separatism is never going to go away. The notion that somehow Meech Lake is going to put an end to Quebec separatism is Utopian in the extreme, as we have already seen. We have seen Mr. Parizeau. He is a tough fighter. In my view and in his view, the Meech Lake accord is going to give him better ammunition to fight with. Anyone who thinks that by supporting Meech Lake, they are going to strike a blow against separatism in Canada is in a fantasy world.

Mr. Harris: Quite frankly, I agree with you. If Quebec wants to separate at a given time, I do not think it matters what is in the Constitution, nor do I think it should.

Mr. Morin: What is the point of the Constitution, then?

Mr. Harris: Well, if I want to stay in this committee, I stay; if I do not, I go. If somebody is determined to tear the country apart or leave, I am not sure you are going to be able to have a--unless you ultimately want to use force.

Mr. Breaugh: Force, you know, would never do.

Mr. Harris: That is right. The other thing that always tears me is that I have never been particularly enamoured with Trudeau's vision of Canada. I have also found that it changed from election to election.

Let me ask you a specific question: Everybody talks about Senate reform being less likely. You have used that and the previous speaker used that. Everybody I hear telling me about Senate reform is talking somewhere along the triple-E--equal, elected and effective: vast provincial power if that occurs. Yet everybody says about this, which appears to give the impression of and the possibility of some provincial power in the Senate, "That's terrible because it eliminates the possibility of giving total power to the provinces in a triple-E Senate." I do not understand that.

Dr. Bliss: What we have done, of course, has just been to create the 'wasps' nest. Instead of talking rationally about Senate reform and where we want to go, we intersected it with Meech Lake. It has thrown the whole Senate thing upside down and topsy-turvy, because we now need unanimity for Senate reform, in anything we want to do. It seems to me that we have got our priorities reversed. We should have hammered out the question of the Senate.

I agree with you. It may well be that the Senate is the one area of our Constitution where we want to safeguard regional and provincial interests. Maybe that is the direction Senate reform should take. I do happen to believe, though, that the other direction Senate reform ought to take is reducing the

powers of this appointed body. The Meech Lake accord has already created an ongoing constitutional crisis in this country because we have a Senate that is now operating with the assurance that it cannot be disciplined by the House of Commons.

We can see it in our current refugee policy today, where obstreperous senators who know that Ottawa cannot discipline them are holding up the government's legislation. This is going to be an ongoing problem. We are only beginning to see the dimensions of the mess we have created with the Senate, because the Meech Lake accord freezes the Senate's powers.

Mr. Harris: I am sorry. The Meech Lake accord freezes the Senate's powers?

Dr. Bliss: It freezes the Senate's powers in the sense that the majority in the Senate know it is next to impossible to get a constitutional amendment through to change their powers after the Meech Lake accord. Two years ago, the Mulroney government, in its first tiff with the Senate, drew up legislation, a draft amendment to change the Senate's power and it was ready to go with it and fight it through. It cannot do that after Meech Lake.

Mr. Harris: OK. Thanks.

Mr. Allen: Thank you very much. I think in some respects for me to engage with Michael Bliss in a discussion of this issue is like an ongoing history seminar we have all been at for most of our lives. I must say I appreciate his comment that there probably have not been enough historians who have been before the committee or before the federal joint committee of the House and the Senate.

I have to underline that it is not entirely our fault, since we issued the invitation carte blanche across the province, and I guess we have not had the full takeup that we might have had. I think that is unfortunate because we have had substantial representation from political scientists, from constitutionalists, either in law or political science departments, and they have given us the benefit of their advice.

It is interesting for us to note that a few of them, like Richard Simeon, who were totally supportive in the beginning, have begun to recognize some problems along the way but are not yet prepared to move against the accord and still think it workable. Others who came before us early, like Peter Russell and others, I do not know where they stand now, but they also thought that somehow this arrangement--notwithstanding some faults that I suppose they are prepared to credit simply to the processes of politics in constitutional debate and the vagaries of life at that level, and having to cement a national agreement of some kind that inevitably involves some tradeoffs--was eminently workable.

I guess I am a little bit concerned, Professor Bliss, when you, in your page 5 summary, make a reference to many experts who believe it could be the destruction of the country. In fact, if you were to take the experts and lay them over against the many people who came from groups of concern of one kind or another, I have not done the mathematics, but I would be surprised if there was a balance that was, at that level, opposed to the accord. How do you explain that?

Dr. Bliss: I thought about that and I know the people who support the accord. They tend to be centred among a few constitutional lawyers, they



tend to be centred at Queen's University, and it is a number that is noticeably not growing. As you know, as you have suggested, it is shrinking.

Mr. Allen: We have canvassed about as many of them as were prepared to talk. We ran out.

Dr. Bliss: Some of them have second thoughts. It is hard. You eventually do an opinion game. I am sure we are finding that it is very difficult in public forums these days to get people to defend the Meech Lake accord. More and more of them do have doubts. I find particularly the alleged constitutional experts are not particularly impressive because they are in a mode of attempting to forecast court decisions, which I think is methodologically wrong and the court is proving this daily. I am more impressed by the unanimity of historians, the people trained to take the long view of the country's evolution and to try to think about the long-term implications of these constitutional changes.

Among my colleagues in Canadian history, I do not know of a single historian who has good words to say for the Meech Lake accord. You have perhaps met a few, but I have not. You know that in my concerns I am really not saying anything more than Professor Ramsay Cook said at your very earliest meetings. I assure you that I disagree with Professor Cook on almost every point in the interpretation of Canadian history, but not--not--on these constitutional issues. I do believe the preponderance of opinion has moved our way because this is an accord that has not been able to withstand criticism.

I would finally say that I had exactly that first reaction after Meech Lake came through. I read it; I thought this is the price of getting the Constitution off the table; sure there will be some problems to work out, but we are flexible enough to do it. Only gradually, as the weeks went by, did I realize that this is not the case, this is far more serious, there is much more at stake here and it is just not going to work in the normal political way.

I wish I was not here. I dislike everything to do with constitutions and constitutional history. It is only because this seems to me to be so serious, with so many unforeseen consequences, that it has seemed necessary to agitate.

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Mr. Allen: I do know English historians in Quebec who think it is quite all right, quite frankly, not to refer to the French ones, for whom either its discussion is passé now or who have accepted it and think it is quite fine. I would not want, in going at this as a professional historian, to number among my colleagues only the anglophone non-Quebec historians. That gets rather partial for my taste in terms of an assessment of this document.

Do you not, in your original document, rather understate the issue in Quebec after 1980 and 1982? You say nobody is around much who is much concerned about this question any more, 1982 did not seem to bring any great aftermath, the Parti québécois fell apart, and so on. I really wonder if that is fair to the public of Quebec, and least of all to those who, in the sort of middle nationalist spectrum, found themselves in an extremely unusual and difficult situation in the wake, of course, of the failure of the referendum and then the failure to get anywhere in 1982 and then the problems, of course, of Mr. Lévesque who, far from being an extremist in those circumstances, tried to strike a quite different posture and become a co-operative federalist of sorts after his own light.

In the turmoil that followed, it was very difficult for anyone to imagine that the PQ was going to be able to mobilize itself or that nationalists in Quebec were going to be able to somehow get themselves together again around favourite subjects. You yourself say this is not a question that is going to go away and separatism is going to be here probably as long as Quebec is around, and I quite agree with that, just as the Canadian confederal structure will continue probably to oscillate in its interpretation from more or less decentralist to more or less centralist interpretations.

Dr. Bliss: Not if you freeze it.

Mr. Allen: Do you disagree with the fundamental proposition that many have said this is probably the minimal request that we are likely ever to get from Quebec? Because it certainly is not the most extreme.

Dr. Bliss: It is certainly in the interest of people in Quebec who want this accord to go through to tell you that this is the minimal, but we all realize that it was an extraordinary bargaining situation in which the government of Quebec went into negotiations and came out with more than it asked for. Everybody talks about their minimum requests. I would be content. I do not think there was any sense of urgency. We may disagree about opinion in Quebec. You would agree that the Constitution was not a major issue in the 1984 federal election or, for that matter, in the provincial election.

Who knows what Quebec's minimum is, unless we sit down and have some real negotiations in which we ask Quebec what it is willing to concede in return. These have not been negotiations. The minimum has not been tested, so we do not know.

Mr. Allen: Who does that, Professor Bliss, and in what forums? We have been through a forum and it was not just something that was dreamed up; Mulroney and the gang saying, "Let us get together next week with all the guys and see what we can do." There was a lot of back and forth, as they usually do with these things. Provincial bureaucrats tested each other out on options and so on. There were clearly matters left over after 1982 that were more than just a question of whether you talked about distinct society. There were immigration matters as well, for example, and there were concerns that were long-standing around the Supreme Court.

Those matters were there and had to be talked about. You cannot finally get the boys around the table without somebody putting something more on it. What other forum would there be and how different would the negotiations be and what different kind of result would one get in the actual play of events and personalities and provinces and federal standpoints?

Dr. Bliss: But you do not change the Constitution of a great nation in a couple of all-night bargaining sessions in which you have exhausted people wheeling and dealing as though it were a collective bargaining agreement.

If this goes down in the history books as how Canada changed its Constitution, it will be a black mark on the history of the country and on the politicians who were involved. I think that you change the Constitution through serious constitutional conferences, as happened in the 50 years that it took to get the 1982 Constitution. It is not an easy process. It is not a quick process. It involves years and years of negotiation and serious thought.

By comparison with what gave us 1982--and I grant you that there were

some hard sessions and times when people had to bite the bullet. None the less, that process is reasonably appropriate to a nation discussing its Constitution. The Meech Lake process is reasonably appropriate to settling a longshoremen's strike. To defend that, it seems to me, surely flies in the face of the seriousness of the issues.

Mr. Allen: We have had problems with the process and we have said so. Mr. Chairman, do you have other questioners?

Mr. Chairman: No.

Mr. Allen: We obviously have problems with the process. At the same time, the process, as it is, is a significant improvement over what it was when, first, we were stuck on unanimity on all points and we had to go to Great Britain. Now we have the capacity to do it at home. Second, we have the opportunity, at least, of limiting the number of items, under one formula or another, that will be treated under the unanimity principle.

The provinces are clearly legitimately involved, and that implies that these legislatures ought to be involved. That is a point that we hope to make stick in the future in some way, and that is one reason we are being fairly deliberate about these proceedings here ourselves.

Obviously, we are in midpassage towards some more appropriate formula for dealing with these questions in the country at large. I think all of us regret deeply that we did not make it in one big jump to a more consultative process. I think the premiers, in their wisdom, could well have opened that up for us by not signing and sealing the issue quite so quickly and then handing it to us the way it was done.

Notwithstanding all that, I am not sure I am prepared to say that just because they themselves only met overnight on this one particular corner of the Constitution--a great classic example in 1964 and 1966, bringing in the original document, was after all the Constitution for an entire country, and it was not just a small corner of the federal-provincial relations around Quebec and a few other matters pertaining thereto. I am not sure that I would be able to object to premiers being put down and forced to go through their paces in the pressure cooker.

Dr. Bliss: All right, forget the process. Is it a good deal? Let us not talk about the process at all. Maybe it took months to work out. Then let us look at it clause by clause. Is this what we want the future of our country to be? Do we want to upset, in my view, the balance of our federal system and freeze it with an amending mechanism that will take away the flexibility we have had in the past? We can talk about the specific issues.

Do we want to use language that in effect turns over the responsibilities of legislators to appointed judges? Are we willing to face the consequence of this? Are we willing to go down in the history books with this constitutional deal? Forget the process.

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Mr. Allen: I guess the question is: Is that even an open question any more in the wake of the charter? We have already told the courts and the appointed judges that that is the power they are going to have, by setting the charter over against everything else in the Constitution.



Dr. Bliss: I agree with you that we--

Mr. Allen: And I see some problems in that. I really do.

Dr. Bliss: Yes. So should we magnify them by adding more loaded language and giving them even more openings to set the fate of our country? It seems to me we are multiplying problems instead of reducing them.

Mr. Allen: Whatever you do with the Constitution, you are involving the court in any case, so the question is not at the point of whether you involve the courts; it is to whether the questions around which you are involving the courts are appropriate ones.

Dr. Bliss: No, it seems to me that there is a vital issue as to whether legislators, in drafting constitutions, do a responsible job in using clear, explicit language, or whether legislators duck their responsibilities and avoid facing up to issues by using vague and ambiguous phrases and, in effect, leaving it all for the courts to decide.

With the abortion decision, of course, we have seen how the courts have a knack of throwing it right back to legislators and, in doing so, getting us in a worse mess than we were before.

Mr. Allen: Those things can happen, obviously, as long as you have a court-Legislature dialectic in the system. I think that is true. I am not entirely sure that that is particularly helpful for us.

Some people have come to us and suggested that what we should do with "distinct society" is to explain what it means. I submit, of course, that if you start being clear in that sense, you get yourself into even more hot water. I am much happier to see "distinct society" develop over time in terms of specific cases. I think that is often the useful way in which our legal system has functioned, because then you address real problems and not imaginary ones and you get real precedents and not figments of people's imagination.

If the courts, in fact, are prone to throw it back to us, so much the better, because that just improves the dialogue around the points at issue. I cannot say I am massively impressed that I should be hugely nervous about having put that language there without having either defined it further or without having made some attempt to circumscribe the capacity of the courts to work with it.

Dr. Bliss: With respect, it seems to me that you have just given an excellent example of the legislators' avoidance of the issue. You are saying, in fact: "I can't spell out 'distinct society.' It's a can of worms. Therefore, I'll leave it to the courts. I'll put the can of worms in their lap and we'll find some way of living with what they do and it won't be our responsibility."

I am saying that it is your responsibility. It is the legislators' responsibility to set the Constitution of the country, not to leave it up to the courts. To say that we have a distinct society within Canada and we do not know what it means but we will let our appointed judges do it, I submit is an abdication of responsibility which is just monumental.

Mr. Allen: I would disagree with that, and disagree with it pretty frontally, because I do not think it sets anything in stone for time eternal.

Secondly, the question of defining: given time, what that means may make that language quite inappropriate for another time. If you take some language presently in the original Constitution, "peace, order and good government," it has been interpreted, of course, from one end of the spectrum to the other over what that means in terms of federal power. I think that is not necessarily bad, because it does make for a more livable Constitution. A slightly looser-fitting garment sometimes can be helpful.

Professor Bliss: I think you are moving, though, from the principles we would agree on, that of course constitutions have to be interpreted, the words have to have meaning, and you are using that to justify constitutional change in which you add new concepts, particularly vague concepts; I am sure you have had a lot of expert testimony on the problem with these concepts. There is a difference between "peace, order and good government" and "distinct society."

To say you think it will work out, it seems to me, is to take an optimistic view of what the courts will decide and our capacity to work with them, which in my long brief I suggest is historically unfounded. We have seen in this country examples of the courts surprising us and of unintended consequences. You well know from your studies of the 1930s of the way in which judicial decisions have nearly paralysed Canadians' capacity to safeguard themselves as a national community.

We have already had one experience in which a combination of judicial decision-making and political antagonisms have paralysed the country, in the late 1930s. It seems to me we are setting the stage for the same thing to happen again under the Meech Lake accord. I just do not believe that responsible legislators can go ahead with optimism that it will work out. I call it Pollyanna-ish, and I think it is. I think we have to be ready for the worst case.

Mr. Morin: Last week one of the witnesses we had was Gordon Robertson, who used to be a senior adviser to former Prime Minister Trudeau, and he made the following statement, "I don't think the acceptance of this accord would lead to separatism, but failure to implement it may well be the beginning of the road to separatism." What do you think of that?

Dr. Bliss: I think that is blackmail. We cannot have a country in which legislators, especially legislators for the province of Ontario, base their decisions on threats of separatism. It seems to me we will be paralysed as a nation and we are simply going to be held at ransom by people who make those threats. I think that is unfounded. It is unfounded in the pre-Meech-Lake reality. It is unfounded in the current reality. In any case, you cannot proceed that way, any more than any of us can live our lives under the shadow of blackmail, and it seems to me there comes a time when you call blackmail blackmail.

Mr. Morin: Mr. Bourassa has heard the accusation in Quebec that the accord does not go far enough, that Quebec lost in that deal. It also took 60 years to be able to bring 11 people together, to finally agree on specifics. Do you mean to say that you are proposing we wait another 60 years?

Dr. Bliss: Sure. I do not have that kind of impatience. I am interested in the long view. The country was not broken before Meech Lake; now it may be. I am willing to take the long view and to talk about these things.

Most of us want to get on with our lives. As legislators, there are many more important things than constitutions.

On your other point, I would like to stress that in my briefs, and I hope in my presentation, I have suggested that we do not know what the courts will decide. In your exchange with Mr. Danson, I think you were quite right in suggesting that he was also predicting the courts' decisions. Mr. Bourassa's critics may be right. If the court does come in with the innocuous interpretations, in a way I will be happy, but the result will be to cause tremendous problems from the separatists, who will then say, "You sold us out." What will we have achieved? Will we be right back to having a separatist sentiment in Quebec? I am sure we are going to have that inevitably; Meech Lake or no Meech Lake, and whatever the courts say about Meech Lake, separatism is going to be a fact of Canadian life.

Mr. Morin: On the other hand, if the accord does not go through, Quebec is saying it is a slap in the face.

Dr. Bliss: Yes.

Mr. Morin: So what do you do?

Dr. Bliss: It seems to me, you judge the accord on its merits and particularly in the light of the interests of all of Canada, and then of course your own constituents, the people of Ontario. I think it is a particular problem for MPPs from Ontario, because we are the least provincial province; our people think of themselves as Canadians as well as Ontarians. What is your responsibility to your constituents? I do not think it is to say, "I am hamstrung because I am afraid of separatism and I have to do what Quebec tells me to because they're going to threaten separatism." I do not think that is your responsibility.

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Mr. Harris: You have said we should not be judging this on the basis of whether Quebec is going to go or is not going to go. I agree with you; I do not think we should either. But I do not want to hear all your arguments about how they might go because of it as opposed to the other way around. I am prepared to entertain your arguments. Let us leave Quebec out of it for now, or the Quebec question and "distinct society," and just go back to what it does to federalism as you see it and as you dislike it.

I think you are extreme, but I have some concerns, which you have raised as well, about some of the interpretations. If you ask me to consider my constituency of Ontario, anything that strengthens provincial powers probably is in the interest of my constituency in Ontario. I do not think Ontario will have a problem meeting any kind of standard in a national program, if you take that as an example. I think other provinces will have difficulties. But talking only about my constituency of Ontario, if there is not a national shared-cost program, my constituency will probably have as good a program as there is in Canada.

Dr. Bliss: If I agreed with you on that point, which I am not sure I would, it is not in the interests of your constituents in Ontario that you give veto power over their constitutional future to the 130,000 people of Prince Edward Island. That is such an abdication of responsibility and an abdication of principles of democracy that it is mind-boggling.



Mr. Harris: Is not the problem with that veto, as you see it and as you are outlining it to us, that it will lead not to a strong federal government but to strong provincial government?

Dr. Bliss: No. It may lead to strong provincial governments, but it will simply lead to paralysis. The Americans found this out under their Articles of Confederation 200 years ago, and I do not know anybody who is familiar with American history who believes we can make this kind of decentralization work in Canada.

Mr. Harris: Paralysis in what? What are the main arguments against federal powers to spend in provincial jurisdictions? Does it break that down?

Dr. Bliss: That issue, which is extremely complex, I am frankly not able to get my mind around, except I know we would never have had medicare under Meech Lake.

I am thinking about other kinds of constitutional change. I am thinking about the concerns of the Northwest Territories and the Yukon. I am thinking of how Canada could never have operated in the past under the universal veto. Ontario would not have a north under Meech Lake, because Prince Edward Island would never have given Ontario that north country; it would have insisted on some kind of similar compensation.

Once you give every Premier the veto, and every one of them has legitimate interests--that is their job--those interests are going to clash and you are not going to be able to change the Constitution.

In terms of your responsibility to your constituents, who believe in democracy, I think that by your acceptance of a veto power by an exceedingly small minority, you are giving veto power over the future of your constituents to a body of people less than the size of the city of St. Catharines. What are we doing when we do that?

Mr. Harris: I guess we are trying to look at what it is that we are giving them that veto power over.

Dr. Bliss: Yes. It is our country's future. That is what.

Mr. Harris: No. It is not our country's future. It is some of the constitutional changes that affect how our country is operated and how that affects our future.

Mr. Chairman: Professor Bliss, you have raised so many issues, and they are disturbing ones. They are ones that have been raised, and we have been wrestling with them. The wrestling goes on as we proceed with each witness. Nobody wants to be blackmailed in any way, shape or form. I think we are trying, as a committee, to come to terms with the accord.

I guess the only closing statement I would make is that I think it is possible that reasonable people might feel that the accord is not as bad as perhaps you do and that that decision might be reached by people who are trying to wrestle through it and deal with some very complex issues. Perhaps that is the only comment we can make, and I guess the Senate committee, as well as perhaps the future committees in Manitoba and New Brunswick.

We have now spent long enough on this that I suppose we realize more and more the difficulty of seeking constitutional change in this country and how

to go about it and how to deal with the number of the questions you have put to us, not the least of which is how we as individual legislators view the future of the country and our role and what it is we ought to do. It does not make our task any easier, but it is quite legitimate to raise it in that context. I think it is good that we are reminded of that.

I want to thank you very much for coming and sharing your thoughts with us. I do not know that you have made the task any easier, but I think you have certainly raised questions that we must deal with. Thank you very much.

Dr. Bliss: Thank you, Mr. Chairman. I do not envy you your responsibilities.

Mr. Chairman: Before calling the next witness I would like to make a note because, as these hearings are on television, there may be some people who next were expecting to see Ms. Barbara Cameron of the National Action Committee on the Status of Women. We have had a communication from Ms. Cameron. Unfortunately she is ill today and will not be able to be with us. We hope, however, that we can reschedule her testimony in April.

I would then like to ask Professor Peter Meekison, the vice-president of the University of Alberta, if he would be good enough to come forward and take a chair. Professor Meekison, we are very pleased that you could join us this afternoon and particularly that you were able to arrive somewhat earlier so we can move into your testimony.

For the committee and those viewing, I might just note that prior to your present position you were for a number of years Deputy Minister of Intergovernmental Affairs in Alberta. So matters constitutional are not things that are totally foreign to you either in terms of the process of bringing about constitutional change or from the academic perspective.

We are very pleased that you could join us and bring your particular experience to bear on the Meech Lake accord. We have a copy of your statement. If you would like to proceed, we will follow up with questions.

J. PETER MEEKISON

Dr. Meekison: First of all, let me apologize for my nonappearance a month ago. I am sure I confirmed everything that committee members might have in their minds about absent-minded professors. Please accept my apology. With your permission, I will read my statement.

I appreciate the opportunity to make a presentation to this select committee on the Constitution. Before commenting on the accord, I think it is important to state at the outset that I have made most of these comments before when I appeared before the special joint committee of Parliament. Since then nothing has occurred which would lead me to believe that the accord should be modified. I believe the accord was and remains a carefully drafted and balanced document and, if ratified, will benefit Canadian unity and Canadian federalism.

The most obvious reason is that it brings Quebec politically into the Canadian constitutional framework. Secondly, it commits all governments to a process of constitutional review and reform in the future. The former corrects the problem which has existed since 1981, while the latter means that Canadians will have the opportunity to continuously review their Constitution with a view to improving its operations. To Albertans and other western

Canadians, this opportunity means that there is a real opportunity to reform the upper House, the Senate.

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Constitutional reform has in one way or another been a fact of life of the Canadian political process for at least 100 years and the subject of extensive debate since 1967. In each of these debates, Ontario has played a critical role. Perhaps its role was most significant during the Confederation of Tomorrow conference held in 1967. At that conference, Canadian federalism was seen to be in a state of crisis and Ontario believed it had a crucial role to play in maintaining Canadian unity. The 1967-71 discussions culminated in the Victoria Charter, which was subsequently rejected by Quebec. A later round of negotiations ultimately led to an agreement in November 1981, which resulted in the Constitution Act of 1982.

When examining the 1987 constitutional accord, two points should be noted. First, all five items had previously been the subject of constitutional discussion, ranging from a limited review of "distinct society" to an exhaustive analysis of the amending formula. With respect, there was nothing new or surprising about the five subjects. The second is that there was considerable publicity surrounding the speech in May 1986 by Gil Rémillard, Quebec's Minister responsible for Canadian Intergovernmental Affairs, who outlined Quebec's five conditions for a constitutional rapprochement. To be sure, no draft constitutional texts were included, but the principles were clearly enunciated.

Three months later, the 10 premiers at their annual conference in Edmonton (a) agreed to begin negotiations on Quebec's five subjects and (b) added a sixth, a so-called second round including discussions on Senate reform. The process would not start and stop with Quebec's initiatives but would continue into the future, a matter of importance to Alberta and other provinces which had other constitutional issues to debate. They were prepared to wait until Quebec's items were resolved. There was a considerable amount of publicity surrounding the Edmonton declaration. In November 1986, the 11 first ministers reaffirmed their commitment to a constitutional agreement which would bring Quebec into the constitutional framework.

At Meech Lake, the long-awaited agreement in principle was reached, to everybody's surprise. It is somewhat disconcerting to hear critics say today that they were unaware of the negotiations or Quebec's five conditions. It was no secret that Quebec was meeting individually with the other provinces and the federal government. I for one do not subscribe to the argument of unseemly haste. The issues and questions have been on the constitutional agenda for a long time. What caught people by surprise was the fact that an accord had been reached. Once an agreement was achieved, the exercise had to be taken more seriously, particularly since unanimity is supposed to be almost impossible to achieve.

At the Langevin meeting, Quebec's five conditions were presented in constitutional language, while the sixth condition, sketched out in Edmonton, was also incorporated into the amendment. The Langevin meeting finalized the text. Time does not permit an exhaustive analysis of the text, and I assume members of the committee are aware of its provisions. Permit me to make a few general observations.

The change to the amending formula has led to assertions that the prospect of Senate reform is indeed dismal. I disagree with this view for a



variety of reasons. There is the assumption that Senate reform is easy or easier under the existing formula than under the proposed changes. To start with, Senate reform would be difficult under any formula. In my opinion, the change to the amending formula does not alter that basic fact.

It has been suggested that neither Quebec nor Ontario will give up its clout in any reformed Senate. If that is the case, then the 50 per cent test found in the existing formula would not be fulfilled, even though eight provinces, not seven, could favour a change. People are too quick to look at the two thirds rule and ignore the 50 per cent population requirement, which I think places a special burden on the province of Ontario, given its percentage of the population of Canada.

I also find it difficult to accept the fact that any federal government would itself recommend to Parliament reform of the Senate over the strong objections of either Quebec or Ontario.

Unlike matters covered under the general formula which affects provincial legislative powers, the proprietary rights or any other rights or privileges of the Legislature or government of a province, a dissenting province can do little about a change it may disagree with to central institutions, such as the Senate. The proposed amendment gives every province an equal say. It extends the principle of provincial equality which is the basic premise underlying the amending formula. As a result, the idea of provincial equality has been extended beyond the 1981 agreement to become one of the cornerstones of the Meech Lake agreement. Provinces are treated alike. There are no first- and second-class provinces. To Alberta and other provinces in eastern and western Canada, this principle is fundamental. To that extent, I would disagree with the previous witness.

The proposed unanimity requirement establishes a different political dynamic than that which operates in the general amending formula. There is no need to form or to seek coalitions or alliances when you have a veto. At the same time, it is very difficult to cast a veto when all around you are seeking a change. The dynamics of intergovernmental negotiation generally force governments to look for a compromise solution. That was true of the Meech Lake agreement and it has been true in the past. The myth that unanimity is impossible to achieve is not substantiated historically. The unemployment insurance amendment of 1940 and the amendments affecting pensions in 1951 and 1964 are three examples.

Discussions on Senate reform will not take place in a vacuum. Other subjects will also be on the agenda. I assume that governments will enter these future discussions with a view to seeing an agreement or agreements of some kind reached. A quickly cast veto on Senate reform could lead to rejection of other proposed changes. From my experience, governments are more likely to agree on reforms when a variety of topics are discussed simultaneously. Some recognition and attention must be given to the different priorities and concerns of each government.

Nor do I accept the view that provinces will enjoy their temporary responsibility for recommending names of senators to the government of Canada so much that Senate reform will be sidelined. It will take a very long time before the entire Senate is changed by this means. I predict that the public will grow weary of yet another annual failure. That alone should expedite change. The idea of celebrating the 50th or golden jubilee meeting on Senate reform somehow seems highly unlikely.

I have considered at length Senate reform and have neglected to mention

the overall change to section 42 of the amending formula. Under the proposed changes, the provinces will extend their veto to the six matters referred to in section 42 of the Constitution Act.

To read the public commentary on this provision would lead one to believe that the provinces had acquired a veto on any and all changes to the Constitution. This belief is simply not correct. Most subjects, including the division of powers, aboriginal rights, the Charter of Rights and equalization, to mention but a few, will continue to be governed by the two-thirds/50 per cent rule. The one qualifier here is that section 35.1 of the Constitution Act, 1982 requires that before any amendment can be made to one of the sections affecting the aboriginal peoples, there must first be consultation with those aboriginal peoples.

Another part of the accord which has received considerable attention is the provision on the spending power. A multitude of interpretations have been given to this section and many doubts have been expressed about the ability of the government and Parliament of Canada to undertake new national initiatives. I feel a second look at both the provision and the history of shared-cost programs is essential.

In the first place, the provision applies only to areas of exclusive provincial jurisdiction. To me, that statement is critical. The section also recognizes the federal spending power for the first time in the Constitution. In one meeting I had with a strong Quebec nationalist, this particular law professor was most dismayed that the spending power was in fact given recognition.

We have a federal system, and this section reflects that reality. For one thing, while there may be fiscal reasons to do so, there is no constitutional requirement for a province to participate in a shared-cost program. Let me illustrate. While the Canada and Quebec pension plans are not shared-cost programs, they do provide an excellent example of what is possible within the federation. Surely this same type of creative thinking is feasible in the area of shared-cost programs. The principle of parallel action is one that has existed in Canada for some time.

To me, this provision strengthens the federal system because it provides for flexibility. To take an extreme case, if a majority of provinces opt out of a proposed shared-cost program, the federal government can say to them: "Forget it. We will do something else with the money or develop the program in a different way." The other example is when one or two provinces say they wish to establish or continue their own programs. Regardless of which scenario is followed, negotiations and discussion are inevitable. The objective is to have everybody participate and/or to ensure that the program of a province which does not participate is compatible with national objectives. As I have already mentioned, these programs take place in the areas of exclusive provincial jurisdiction, which is a principle of some concern to provincial legislators. The political process will dictate how this provision evolves. To me, it is a safety valve.

Other provisions in the accord require annual first ministers' conferences, one on the economy and another on the Constitution. First ministers' conferences have been held periodically since 1906. At a first ministers' conference, all governments are equal around the table, something which cannot be overlooked.

For the past few years, provinces have placed great weight on convening

an annual meeting on the economy. In 1985, the 11 governments agreed to annual meetings on the economy over the following five years. In recent years, these conferences have been held in front of the television cameras. They are hardly secret affairs. In my view, they have proved themselves to be a valuable mechanism for exchanging views in our increasingly interdependent federal system. To me, they are equivalent to a convention of the Constitution, and this provision merely confirms that fact. It should also be remembered that a constitutional revision along these lines was included in the Victoria charter of 1971.

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The conferences on the Constitution are a different matter. Again, this mechanism is one which has evolved over time. Since 1927, approximately 27 such conferences have been held, the vast majority in the last two decades. The future agenda, other than for Senate reform and fisheries, is open-ended. What constitutional changes will emerge are unknown.

The provision does not guarantee change but merely provides a vehicle for examining issues and proposing them. It is inconceivable that a major amendment would be seriously considered without first having some kind of intergovernmental discussion. It should be remembered that whatever is agreed to at any conference must still be debated and approved by Parliament and the appropriate number of provincial legislatures.

The question you might ask is, where does this provision leave us, a legislative committee? What I feel will occur is that committees such as this will examine the problems associated with the Constitution. They can propose remedies on a continuing basis. With an annual conference, there should be no difficulty in getting material on the agenda.

I still believe one of the most far-reaching and important reports on the Constitution was that prepared by the joint parliamentary committee in 1972. To me, it stands as an example of what can be done. There were many opportunities to review issues and propose innovative solutions to constitutional dilemmas.

In summary, when an agreement is reached after long and sometimes difficult negotiations, it is usually based on a series of compromises and the recognition that perfection or absolutes may be impossible but that acceptable solutions are realizable. To pull on one particular thread could unravel the entire agreement, because the delicate design so carefully woven can be easily destroyed. There will be future discussions. All of Canada's problems cannot be solved at once nor for that matter through the constitutional process. I would respectfully suggest that this committee recommend the adoption of the resolution without change.

Mr. Chairman: Thank you very much. I think one of the aspects that is particularly interesting for us today is the fact that your experience has come from the west. While I am not suggesting that through one person one can reflect the various views in the west, that is certainly one area where we have not, as a committee, been able to explore some of the dynamics of the development of western constitutional thought with respect to the accord. I think that will be an area we will want to explore as we go through our questions.

Mr. Breagh: One of the things we have not spent a lot of time on, actually, is this idea that is very popular in many parts of western Canada



about reforming the Senate. In part, that is probably a reflection of our own constituencies. This is not all the buzz at the Midtown Mall in Oshawa. No one could care less about the Senate; no one quite knows that we have one. They are not sure why it is there. They seem to be aggravating Mulroney. We generally think that is a good idea.

What is it that has made this a focal point of discussion in western Canada? I had a chance to talk to the select committee from Alberta about its proposals for Senate reform. They were very enthusiastic that this was not only something that was possible but also something that in many ways would redress some things that they thought were wrong with Canadian federalism for a long time.

I wonder if you would share with us a little bit the importance of Senate reform that you see, and why it has fallen into its place in western Canada as opposed to Ontario where it has not received much attention.

Dr. Meekison: The principle reason I would give in response to the question is that there is a feeling that many of our national institutions, particularly Parliament, do not really give the different regions an equitable say in decision-making. In the House of Commons, which is based on representation by population, which is of course certainly democratic, the vast majority of members come from Quebec and Ontario.

This point was driven home to the people in Alberta in the 1980 election, which saw the federal Liberal Party returned to power. When the people turned on their television sets after the polls had closed at eight o'clock, they discovered that somewhere around the Lakehead a majority government had been elected, and regardless of what happened in western Canada it would not affect the outcome.

There is a lot of discussion one can have on how the electoral system works in Canada, but the fact remains that many people in western Canada felt that their voice would no longer be heard, and if the federal system was to operate effectively, changes in the upper House whereby provinces could be given equal representation would be one way of addressing that problem. In fact, that is the model that we see in the United States.

Senate reform is something that has been pursued by other provinces in western Canada at different times. It is certainly something that British Columbia has pursued on and off for the past 15 years or so. In Alberta, it has been a policy which has had quite strong support at the grass-roots level. It is discussed in shopping malls, perhaps not every weekend, but it is certainly something that one can get into a debate on. I think it is the one way many people see in which this imbalance within the country can be to some extent offset.

A key issue that Alberta has pursued in constitutional discussions is the notion of provincial equality. It is certainly the cornerstone found in the amending formula, and it is one that I think Alberta will continue to pursue. It certainly is manifested in the triple-E concept of Senate reform: equal, elected, effective.

Mr. Breough: Let me just pursue one other point you have raised there. My assessment of the accord is that it puts in place a rather subtle shift in power towards the provinces in some ways, but I do not read a dramatic shift from the federal government to the provincial governments. To be fair, there is a lot of ranting and raving about this being the end of

Canada. The beaver will die and we will be balkanized. The earth is coming apart quickly on us here.

There has to be a recognition of a shift of responsibility to some degree. This province, for example, has resources, population base, needs. It is clearly different from other provinces in Canada. To treat Ontario the same way as you treat all the other provinces in some respects is silly, because our needs are different.

The reality of government is different. This Legislature sits almost year-round now. The members are devoted almost exclusively, full-time, to legislative responsibilities in one way or another, and they represent a lot of folks. It is hard, I guess, to design a system that says: "Here is a population base of nine million or 10 million people with 130 people in their Legislature. We will treat them in the same way that we treat a population base of 130,000, with a smaller chamber that does not meet very often." But I think we have to do that. I read Meech Lake to be a recognition of the fact that there are differences among the provinces, different structures, and the Constitution of Canada has to reflect that.

I am interested in your assessment of the shift, though, of the basic power, decision-making process from the federal government to the provinces. I read that to be nuance. I think it is very delicate. I do not read in there the massive balkanization of a nation that many others, who are eminently qualified to use those words, have discussed in front of the committee. We have heard it this afternoon again. I am interested in your assessment from a slightly different perspective. Is that a dramatic shift in there?

Dr. Meekison: I certainly do not see it as dramatic. In fact, on a scale of one to 10, if one is the least and 10 is the most leading towards balkanization, I would say it would be about a half or one. Basically, the provinces have a very modest role now in recommending names of senators. They are recommending Supreme Court of Canada judges. The amendment on the Senate is very similar to one which was proposed in 1887. It is hardly new and it is something that Ontario, I believe, if my memory serves me correctly, was very keen on 100 years ago.

The one area I feel people have focused on is the spending power. The language is quite clear that it is the authority of the federal government to spend money in areas of exclusive provincial jurisdiction, and there is recognition of the spending power now in the Constitution. In that sense, one could argue that there is a tradeoff, that there is at last recognition of what the federal government has claimed it has. Yet in order to exercise it, the federal government allows the provinces to opt out, if you like to use that term, of certain programs. Again, that is not new. That was recommended in the mid-1960s by, I believe, the government of Mr. Pearson, the Established Programs (Interim Arrangements) Act, where Quebec was allowed to opt out of the hospital care program if it so chose.

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Immigration is another area where, through federal-provincial agreements--and Quebec was the only province that pursued it, although Alberta tried to pursue it later on in the late 1970s, but it should be also remembered that immigration is at the moment a concurrent responsibility under the Constitution, along with agriculture.

I read one statement by one academic which said that if Meech Lake is

approved, Canada will become virtually ungovernable. Not only do I not accept that, I find that statement irresponsible.

I feel that this is a balancing of what I would say was too much centralization, leaning towards a recognition that in developing national programs--a truly national program is one that can be put together and crafted through federal-provincial discussion and dialogue so that the very best experience at both the federal and provincial levels can be put together.

We find right across the country, in our different social programs and health programs, a great deal of experimentation. You can tailor a program to meet the needs of Prince Edward Island versus the citizens of Toronto versus the rural areas in northern British Columbia. There are all sorts of different ways of putting together programs. That is one of the good things about a federal system: You can have different approaches to public policy.

Mr. Breaugh: There is just one other thing I would like to pursue. In your presentation, you took a rather different view of a number of things. Professor Bliss was just in front of us. He, of course, is outraged at the notion that 130,000 people could form a province like Prince Edward Island and that they would have a veto power over everybody else and would beat up on us regularly and do nasty things to us.

I confess that when you read the accord all the way through, it starts to shrink. They do not have a veto power on everything. They have a veto power on very specific things having to do basically with federal institutions. That becomes less and less. Then it occurred to me to wonder how many times people would actually use that veto and what the ramifications would be if a province did what I think Professor Bliss anticipated, that is, use that regularly.

As a practising politician, I know that very often one of the things you do not want is a power to take something right off the agenda. You would like to hang around the edges and beat up on it a bit but you do not really want it blown out of the water because it can be used as a discussion point or a bargaining chip.

I would be interested in your experience in intergovernmental affairs, whether you really think that veto power is going to get used a lot. I guess the other way to look at it would be to simply say that it gets untenable in a hurry if one of the provinces did not have a veto power but decided it did not like what you were going to do--reform of the Senate, for example, which is one of the things that would have to be done with unanimous consent--and one or two of the provinces said: "That's the stupidest idea I ever heard. We will now only lose the political argument and we'll let it go through, but thereafter, we won't participate in providing you with nominations and we won't pay any attention to anything those idiots in the Senate actually do."

When you get right down to it, if all the players in the room, all the provinces in Canada, do not agree that the proposed changes to the federal institution are sensible, workable notions to the point--I guess the dividing point is simply this. They may dislike the proposal a little bit, but if they dislike it to the point where they would actually proceed to try to veto it, whether they have the veto or not, it seems we have a problem.

Of course, to date, we have had that problem. Supposedly, a lot of what Meech Lake is about is the fact that one of our provinces did not like the last effort at making a Constitution. Although they legally were part of the country, they decided not to be a player, not to attend the meetings. I seem



to recall they kind of hung around the edges and kept pretty close tabs on what was going on, but I would be interested in hearing your assessment of whether the veto power that is in here is really the vicious tool that some have suggested it might turn out to be.

Dr. Meekison: I do not think it will be. First of all, it is limited to a specific number of areas. It would not, for example, affect the division of powers.

If you applied the existing amending formula to the Meech Lake constitutional accord--let us just take the amendment on the spending power: that amendment could be included in the Constitution Act with a two thirds, 50 per cent rule, two thirds of the provinces representing 50 per cent of the population. So could the "distinct society" clause. To try your advice, any changes to these in the future would require two thirds of the provinces representing 50 per cent of the population.

Going back to the original amending formula which was agreed to in 1982, there are five areas which are already subject to the unanimity formula, and six more are being added.

I think it is quite possible that a province may veto something, but I talked to some Quebec officials who had participated in the decision to exercise the veto in 1971 over the Victoria charter. In speaking to the Quebec officials, they said that it was extremely disturbing to them because many other governments in Canada felt they had participated and then at the last minute they had changed their minds and it had brought the entire process to a standstill. They said it was very difficult to exercise.

Along the lines, I think, of what you are suggesting, my sense is that a government may threaten, but actually exercising it is a different matter because there are so many elements within an agreement based on a series of compromises.

This is what I find, for example, in the Meech Lake agreement. If it were just a specific amendment to the Constitution on a particular matter, you would probably say, "I don't like that," or the Parliament of Canada would say, "We don't like that." But when you have a number of things on the table and there has been a willingness to compromise on a different range of issues, for a province then to turn around and veto it, I think is going to be very, very difficult. I would expect that signals would be given long before that.

You might ask yourself, in looking at the amending formula, how did certain things get put into the veto column in 1982? Let us take the office of the Queen, the Governor General and the Lieutenant Governor. The question was, if you had, say, eight provinces saying, "We should become republics," or doing away with the monarchy and Ontario says, "We don't want to," would that be good for Canada? The assumption was that we were either all in it together or we should not have such an amendment. To do otherwise would be so divisive.

My sense is that the threat of veto is always a possibility. I do not think the reality of it being exercised is going to be there. We have had a number of amendments in the past which have received unanimous consent of all governments. I am told that is impossible. The proof is in the changes that have been made to the Constitution.

Mr. Allen: Somewhat on the same tack, perhaps I could get your response to the issue around the creation of new provinces, and in particular

the arguments the territories have been advancing with regard to their current dilemma as they see it and their exclusion from the future of the process, as they read it, in any case.

First of all, perhaps it is just simply the question, why should we not stay with the existing formula arrangement by which Alberta and Saskatchewan, for example, came into the status of new provinces? Why should we allow other provinces in on that game when they were not in on the inclusion of some others?

Dr. Meekison: The question of the admission of new provinces is one which goes back some time. In 1949, when Newfoundland joined Canada, whether or not the other nine provinces should in some way be consulted was certainly raised. They were not, and Newfoundland joined Canada.

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In 1976, when there was some discussion on constitutional reform, Premier Lougheed, on behalf of the provinces, Alberta then being the host province of the provinces, wrote Mr. Trudeau saying, "Here is a list of areas where the provinces feel that changes should be made to the Constitution." One of them was the admission of new provinces. This was in 1976. So when the amending formula was put together, in 1980-81, that particular matter resurfaced and was included.

I think the question is a fair one. The fact, though, is that it was felt to be important that the sister provinces should have some say. It does change the balance within Confederation. For example, if we do pursue Senate reform, and if the principle of provincial equality is accepted--there was a question raised by the previous witness about balancing eight or nine million people in Ontario and 130,000 in Prince Edward Island. The argument is even more extreme if you say Yukon versus Northwest Territories versus Ontario in terms of provincial equality. It does change the operation of the country. It could have a major impact on federal-provincial financial relations, the equalization formula and so on.

It also would apply to the admission of any other parts of the globe which might apply at some point to join Canada. While people might say, "Oh well, that is not going to happen," the fact of the matter is it could happen. I doubt it, but it could happen.

My sense, though, is--and this goes back to the previous question, of veto--I find it hard to see other provinces vetoing the admission of a new province once the Parliament of Canada had approved it. I do not think the problem is going to be so much getting the provinces to agree and participate; I think it is going to be more difficult to convince the Parliament of Canada to admit a new province.

Should that take place, I think the other provinces would be in a very difficult position to say no, because I think the major debate will take place between the government of Canada and the territorial governments as to, if you like, the terms of union. If we look at the terms of union of the western provinces or Newfoundland, they are different. When Alberta, Saskatchewan and Manitoba joined Confederation, they did not at that time receive title to the public domain or ownership of the natural resources. It took 25 years to correct that.

When Newfoundland joined--and I use this as an example in my

classes--one of the things that it could legislate over that the other provinces could not was oleomargarine. Margarine today is not a major political debate, but it was in the 1940s, and Newfoundland has the right to legislate over it. You get differences.

It seems to me that if too much power is given, or not enough--in other words, if you are creating new provinces slightly different from the existing ones--they may either say, "We think that is unfair," or not. I would rather wait and see what happened because my sense is that it is not going to be as bad as one might think. My sense is that I will wait and see what the Parliament of Canada does before I worry what the provinces are going to do.

Mr. Allen: I am reading into your response at least an observation that while in terms of sections 37 and 38 of the 1982 Constitution Act, which referred to including the territories in the discussions around their future status, the dropping of that does not imply that they would not be involved in discussions. There still is a relationship with the federal government that would precede and lead up to anything that happened with regard to their future. If the federal government were so disposed, it would be able to transfer a good deal of responsibilities just short of provincial status. That could happen on a negotiated basis. It would be very difficult then for the other provinces not to agree to the last step. Is that a scenario you would see likely or possible?

Dr. Meekison: Yes. The reference to section 37, of course, in the Constitution Act 1982 was the reference to the conference on aboriginal rights. The Yukon and Northwest Territories were invited to be participants in those conferences. But if you look at what is happening in Canada today--and it started in 1982 at the premiers' conference--the territorial governments were, for the first time, invited to that conference. That particular conference was held in Nova Scotia and the territories sat in the balcony. It reminded me of Upper and Lower Canada sitting in the balcony watching the debates in Charlottetown where they had been invited to participate.

The next year, the premiers' conference was in Ontario. The heads of the two governments were there and they participated, not completely, but they did make presentations to the conference. They debated and participated in the first agenda item, which is usually the state of the economy. There is no doubt in my mind that they are gradually being brought into the provincial fold. After a while they do become, in many respects, similar to being treated as provinces.

In terms of their own political evolution into the future, until they become provinces, that is subject to negotiation between the territorial governments and the federal government. The last step would require constitutional amendment, but if they have been part of the discussions, interprovincially, on a variety of things, I just do not see it as being all that implausible or improbable that they will not get unanimous consent. I just do not think it is going to happen.

Mr. Allen: Can I turn you briefly to the question of the national objectives, national standards debate? Do you see any significant issue or matter at issue there? You will recall, of course, that some people have said objectives simply could be reduced to the mere fact that there should be a national program and that would be it. That would be the objective. Everything else would be open to negotiation, to differences of opinion with regard to the provinces' commitment.

On the other hand, there are those who say standards are so much



stronger. We had a presentation by the Canada Council on Social Development, which seemed to think it would be possible to define and urged the governments in question to undertake a definition of what "national objective" means. They seemed to have no trouble with thinking that it could involve, for example, the clarification of specific national needs to be addressed; desired goals; anticipated outcomes; that there could be definition of fundamental principles guiding the formulation of the national objective that would apply to all social programs and include levels of comprehensiveness and accessibility and so on; that there would be recognition of rights and social entitlements which would also include even the covenants and international agreements the country had been party to internationally; and that there might finally be a stated commitment to monitor and assess programs in meeting social needs. This would all be beyond the whole question of standards of administration, but rather in terms of content and purpose.

Is your sense that the phrase "national objectives" is expandable in those senses without offending the word or without creating major court challenges around it?

Dr. Meekison: That is a difficult question to answer. Any word in the Constitution can be challenged in the courts if people think that whatever is taking place is something they do not like. I found that out recently in reading material; for example, the section that was written on natural resources was written with such care and precision that I would have thought it would be virtually unassailable, but not so, once people started to look at it.

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It strikes me that one should read the language in what I would say are commonsense terms. When legislation is tabled in Parliament, the government is presenting its case; it is stating what the objectives are behind a particular program. They may be multiple objectives; they may not be. It seems to me that a province in developing a program, assuming it opts out, would try to live within that framework. It is quite possible that in certain social programs the national objective could be so broad that it encompasses everything, such as the wellbeing of Canadians. That to me is pretty vague.

I would think there is always the possibility of a challenge, but the objective of the clause is to force governments into negotiating what I would say are good programs. Again, the classic example is the Canada and Quebec pension plans. Had Ontario not participated in the Canada pension plan, we would not have a Canada pension plan today. Ontario's participation was critical. Quebec clearly was not going to participate, and if Ontario did not, the notion of portability and compatibility would just not take place; in that sense, Ontario would be able to say, "These are areas we think should either be included in the legislation before Parliament or not."

If the provinces push too hard in developing these programs, the government of Canada can say: "We will use tax credits. We will give grants directly to citizens, such as family allowances." There is nothing prohibiting that. If they want to develop a genuine shared-cost program in an area of exclusive provincial jurisdiction, it seems to me these objectives are going to be a blending of federal and provincial interests and concerns.

Mr. Cordiano: I would like to deal with the whole question surrounding the Senate. Some critics have argued that what has been put forward now, that the provinces are going to nominate people to the Senate for

approval by the federal government--that is, come up with a list for the federal government's approval--will freeze it in time and that we are simply transferring one form of patronage from the federal government to the provincial government. Certainly, critics in western Canada have commented on that, and we have heard from a number of groups which have said exactly that.

Do you think, first of all, that is something that is widespread in western Canada, or is it the view that is held by a few people in western Canada? Second, do you think that is a possibility, that we will not get further on with reform of the Senate beyond what has been accomplished in Meech Lake?

Dr. Meekison: The view that you have expressed is one that is certainly being presented by different groups in western Canada. The Canada West Foundation in its submission to the parliamentary committee made such an observation. I disagree with the Canada West Foundation and its observation on that particular point. To my knowledge, the only time this new mechanism has been used was in Newfoundland, when Mr. Ottenheimer was appointed to the Senate. I think Mr. Ottenheimer will bring great distinction to the Senate, given his experience in the Newfoundland House of Assembly.

The more important question is whether that is all the reform we are going to see. Of course, if Meech Lake goes through, any further changes to the Senate, no matter what they are, would require unanimity. Since unanimity is impossible to achieve, people say it therefore stands to reason that nothing is going to happen. I do not accept that. I just feel that Senate reform is not only possible but also desirable and would make our parliamentary system very different. The pressure will be on all governments and all legislatures to come up with an appropriate, if you like, number of changes, which I think is possible.

The other side of the question you have raised is that the provinces will like their new-found power so much that they themselves will back off. I do not buy that. I feel that the western provinces and, to a lesser extent, but certainly once they start to think about it, the Atlantic provinces, see great benefits in Senate reform with respect to enhancing their role within Confederation.

Mr. Cordiano: By having elected senators, and the way that our Confederation is balanced between provincial powers and federal powers--and certainly what we are looking at there is the model of the US system, with elected senators and having equal representation from all regions--how do you think that will affect provincial powers versus federal powers?

Certainly one thing I can see happening immediately is that the power of the House of Commons would be somewhat--I will not say restricted, but affected or changed somehow. The nature of the federal House would be changed. How do you see that affecting provincial-federal relations and the power struggles that have taken place in the past?

Dr. Meekison: I think you have put your finger on a very important point, that resistance to Senate reform may not come from the other provinces; it may come primarily from the House of Commons. They may feel they share sufficient authority now, that given the realities of party politics and party discipline, the House of Commons itself should be examined and that the real area for reform is there.

The other argument I have seen and heard is that a reformed Senate will

lead to the diminution of the role, certainly, of the provinces, not so much the legislatures, but of provincial governments in terms of national decision-making; and that it will do away with the need for federal-provincial conferences and the Senate will become the area where these debates will take place.

I am not convinced that will necessarily happen, in part because of the other provisions of the accord which require annual first ministers' conferences both on the Constitution and on the economy. Second, if the Parliament of Canada continues to legislate primarily in its own areas of responsibility found in section 91 of the Constitution Act, then of course some of these problems will not surface.

On the other hand, if the Parliament of Canada begins a series of legislative programs under the spending power which we just talked about, then you would find much more debate which could have an effect on provincial legislatures and governments taking place in the Senate. There would be a change which would take place, I think, over a long period of time, not overnight.

Mr. Cordiano: We have heard certainly that Meech Lake is extremely important to national unity and the most important component of that is including Quebec in the constitutional fold, having accomplished that at Meech Lake. Most people would say that Senate reform is a western initiative, that it is an important matter for the west. How important would it be to the west if we did not go additional steps in the process of reforming the Senate?

Being located in Ontario--I think some of us have travelled to western Canada on a number of occasions, but we do not have the perception that we should perhaps have on this question. Certainly we are closer geographically to a province like Quebec and perhaps can ascertain information a little more easily about what is going on at the grass-roots level in Quebec. I admit to you that I would not have that kind of knowledge of western Canada, making it a little more difficult to simply know how important Senate reform is going to be to western provinces.

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Dr. Meekison: I suspect it will vary from province to province. Certainly, Alberta and British Columbia have placed great importance on this. They see it as the principal means whereby their interests can be discussed and debated in the Parliament of Canada and taken into consideration to a greater extent. Whether or not it is true, many people in Alberta feel that the national energy program would not have been approved in 1988 had there been a Senate in existence along the lines of what is being proposed.

Mr. Cordiano: Last question, Mr. Chairman. I know time is running out here. Is there a feeling that it is a strongly held view, not just by politicians in the west, but also by the people? That is hard to assess, I understand, but in your opinion?

Dr. Meekison: Yes, it is. One way you might test this for yourself is, in the next federal election, look at the number of parties other than the national parties. See how many candidates they field and how they do politically. There was a by-election in Alberta, the Pembina by-election, and while the Conservatives were returned, a number of other parties, such as the western reform party, the Western Canada Concept or some group like that, were there.



I think you will find that the numbers are significant. They may not be threatening to national unity but they are there. In 1982, a western separatist was elected in Alberta, and some people thought, "Maybe there is a problem there." We thought separation was an issue to the east of us, but there was a problem to the west. The notion of western alienation is something which does exist.

Mr. Cordiano: Is it attached to Senate reform?

Dr. Meekison: Yes.

Mr. Cordiano: Is Senate reform one of those issues that must be accomplished, and that is sort of parallel to having the west feel as though it is a more meaningful part of Confederation?

Dr. Meekison: Is a more meaningful part of Confederation and an effective participant, or can participate effectively, if you like, in national decision-making. They see Senate reform as the principal manifestation of this.

Mr. Cordiano: Time is running on. We did not have enough time to deal with your views on how Senate reform should take place. I would have liked your views on that, but in the interest of continuing my friendship with my colleagues, I must stop there.

Mr. Chairman: In the interest of maybe putting mine at risk, there are just a couple of points the chair would like to raise, although it did strike me that perhaps one of the things we ought to recommend is to get some of the good citizens of the West Edmonton Mall together with some of the good citizens of one of the malls in Oshawa and perhaps have an exchange program.

Mr. Cordiano: Mall-to-mall relations.

Mr. Breaugh: Solve all the world's problems in a hurry.

Mr. Chairman: It would be interesting to continue that way.

There are three other areas, and I wonder if you might comment on them. We have probably had some of the strongest and most articulate presentations made around the area of the aboriginal question, where that is now and, I guess it is fair to say, the suggestion that one of the major problems there is not so much Quebec as the western provinces.

We have had very strong concerns expressed about language rights by the official-language minority groups, the English from Quebec and French-language organizations outside and we have had very strong testimony from a wide variety of women's organizations with respect to the whole question of charter rights and what has happened to their position. I know we can talk about each of those issues, especially the concerns expressed by women and the official-language minority groups. We have had people who have said, "On balance, I think there is a problem" or "On balance, there is not."

I am not so much concerned with that aspect as I am with the perception that some injustice has been done, that something that was possessed after the 1982 agreement has now, somehow or other, been lost. I suspect in a number of these instances one cannot really argue beyond a shadow of a doubt that nothing has changed, because we still do not even know what all the clauses of the charter itself mean, let alone what the Meech Lake accord and the charter together would do.

As we look at the accord in terms of what it has done in terms of Quebec and bringing Quebec more willingly into the Canadian fold, how do you think we should be approaching those three other areas?

There has been an expression before this committee and perhaps also before the special joint committee on the 1987 constitutional accord. None the less, I think we have been struck by a consciousness among major, large minority communities that they have been left out, and there really is not a great deal of faith that the words from first ministers, "We will deal with those issues down the road," will in fact be kept. I suppose we are wrestling then in some respects with, are those concerns serious enough that one really cannot go forward with the accord or are there other ways, not just saying, "Do not worry, we will deal with these"? Are there some other avenues that are open that could deal with these concerns?

I am just wondering, from your perspective and perhaps with a sense of some of the comments in western Canada on these issues, what your reflections are on those three areas.

Dr. Meekison: Really, I think you would have to deal with them quite separately or distinctly.

The aboriginal one, to me, is totally different from the questions raised by women's organizations and by minority language organizations outside of Quebec or within Quebec.

When the aboriginal constitutional discussions took place, there were four meetings from 1983 to 1987. Indeed, the last one took place just before the Meech Lake conference, and it ended in failure when the requisite number of provinces were not prepared to agree to the amendment that was being proposed.

The future in that area is, to me, a question mark. It is a question mark in that the governments of Canada could at some point say, "Yes, we should meet again with the aboriginal groups to start from where we left off in 1987." The critical difference--and this is why I make a distinction--is that aboriginal groups rightly feel that if there are to be discussions, then of course they should be part of the discussion. In that sense, the process is fundamentally different. To me, there is nothing preventing that from resuming if the governments in Canada and the aboriginal people themselves say, "Yes, we should take another look at that."

If you look at those discussions--and I was part of those discussions in 1983, 1984 and 1987; I did not participate in the 1985 discussions--one thing was quite clear. The constitutional agenda at that time was devoted, primarily, exclusively to the aboriginal questions or the questions in that area. Governments did not really want to start other areas because the aboriginal people rightly felt that this might detract from or dissipate their work. There is only so much energy and time that people can devote to the subject, as I am sure you are finding out. With the aboriginal one on the agenda, that was pretty well it.

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As you recall, the Constitution Act of 1982 required just one such conference and I had been part of the preparation for that conference. It became frantic. Since it was the one and only, everything had to get on the agenda. When people said, "Maybe we should have two or three more

conferences," it reduced not only the expectations but the agenda. Those conferences demonstrate something which, in part, was addressed by the previous witness, the notion of expectation that a meeting will take place and at the end of that meeting there will be an agreement. If there is no agreement, then people are disillusioned and they are bitter.

The same thing, I would say, would be true of Meech Lake. Had there not been an agreement, I think things had gone too far for people to walk away without saying, "Yet another failure." I know that was not the intention but, having been at Meech Lake and seen the hundreds and hundreds of reporters--maybe that is an exaggeration; dozens and dozens of them--and Quebec nationals waving flags saying, "Go away," there would have been a price for failure. All right. I would take the aboriginal question and say that is a separate issue which has to be addressed separately and it cannot be intermingled with other constitutional discussions. I would not say, "Put aboriginal rights and Senate reform on the same agenda." To me, that is just not on.

Take the other issues, the women's one and the minority language one. I think the whole question of language is very important in Canada right now. We are seeing the government of Quebec being challenged. We see a debate in western Canada. We see debate in this province. If you look right across the country, you will see this is surfacing and it shows that maybe Canadians are not as tolerant or accepting of this policy as we might otherwise have thought. Constitutional guarantees are very important at this stage.

What can you do? I referred to this in my presentation and perhaps I should develop it a little more fully. With an annual meeting of first ministers on the Constitution, I think your committee will become a standing committee of this Legislature or provincial Parliament and you will probably either be holding hearings simultaneously or just before first ministers' conferences where you can then write reports and give recommendations as to what should be on the agenda.

I think committees such as this can determine the agenda in the future as opposed to coming into the process at the end. If anything means that constitutional discussions will be alive in Canada, it is the fact that there will be annual meetings and that groups such as this will continue to meet. Different citizens' groups and individuals can come forward and say, "We think certain things should be done."

Moreover, I feel that, with Supreme Court decisions coming down, people are saying: "We have turned the Constitution over to the courts. It is terrible." I am not convinced that it is terrible. I am not sure we have turned the Constitution over to the courts. The courts have in the past come down with opinions that some people like and some people do not like. In our system there are going to be winners and there are going to be losers in terms of court decisions. What it does mean is that, if people do not like what they hear or see, they can come before this committee and say, "We recommend you recommend changes."

In all of the hearings, for example, for the Pepin-Robarts commission or the parliamentary committee which went across Canada between 1970 and 1972, people spoke about every possible subject. Then your job is to take it, filter it and make recommendations on the floor of the Legislature.

I am excited about this because what you are seeing is the end of one process. To me, Meech Lake is not the beginning, it is the end of "What does



Quebec want?" and resolves an issue which has been debated in Canada for 25 years. We are seeing the beginning of another process. The other process is a much greater public involvement in constitutional development and it is going to be a binding result of court decisions, hearings such as this and presentations to governments. It will be, in my view, a cyclical process, it will continue to unfold, which means that constitutional questions will become matters that Canadians do take seriously and debate.

I am very excited about the future. I feel that you probably have a lot of hearings ahead of you, far beyond Meech Lake.

Interjection.

Dr. Meekison: Sorry about that.

Mr. Chairman: You will notice some people disappearing below the table.

Dr. Meekison: I have been advising the government of Alberta on constitutional matters since 1969. There is far more discussion and interest in the Constitution, and the manifestation of this was the public hearings that were televised in 1980-81 in respect to the Charter of Rights. That is what has given rise to this interest, and I do not see it diminishing. It will place a great responsibility on governments and, to me, on legislatures.

Sorry for the long answer.

Mr. Chairman: On behalf of the committee, I want to thank you very much for coming and joining us this afternoon, both for your paper and for the answers to our questions. We do very much appreciate that you were able to meet with us and share the reflections of your own experience, which, as you state, has gone on since 1969.

While we perhaps were reacting with some humour to the thought that we would be doing this for weeks and months and years, I think that if we have discovered one thing through our deliberations to this point, it is that while constitutional amendments may not be what every Canadian citizen most wants to talk about, there certainly is a very representative group of the public out there that feels strongly about a whole series of issues.

While they may not all be able to be solved in a constitutional way, none the less hearings such as this do provide a forum to wrestle with some of those issues and to get them on the public record. I think you are a probably quite right that we are going to be hearing a lot of interesting things in the future, whether on Senate reform or any of the other issues that we have been discussing.

We thank you very much for your perspective and for being with us this afternoon.

Dr. Meekison: Thank you very much.

Mr. Chairman: The committee will stand adjourned until 10 o'clock tomorrow morning in this room.

The committee adjourned at 4:57 p.m.



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SELECT COMMITTEE ON CONSTITUTIONAL REFORM

1987 CONSTITUTIONAL ACCORD

TUESDAY, MARCH 29, 1988

Morning Sitting

\ Draft Transcript



SELECT COMMITTEE ON CONSTITUTIONAL REFORM

CHAIRMAN: Beer, Charles (York North L)

VICE-CHAIRMAN: Roberts, Marietta L. D. (Elgin L)

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Eves, Ernie L. (Parry Sound PC)

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Harris, Michael D. (Nipissing PC)

Morin, Gilles E. (Carleton East L)

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Substitution:

Matrundola, Gino (Willowdale L) for Mrs. Fawcett

Clerk: Deller, Deborah

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Bedford, David, Research Officer, Legislative Research Service

Witnesses:

From the Alliance for the Preservation of English in Canada:

Leitch, Ronald P., National President

Individual Presentation:

Tryphonopoulos, Nicholas

From the Income Maintenance for the Handicapped Co-ordinating Group:

Santos, Richard

Beatty, Harry, Legal Counsel

LEGISLATIVE ASSEMBLY OF ONTARIO

SELECT COMMITTEE ON CONSTITUTIONAL REFORM

Tuesday, March 29, 1988

The committee met at 10:13 a.m. in room 151.

1987 CONSTITUTIONAL ACCORD  
(continued)

Mr. Chairman: If we can begin our session this morning, I would like to welcome Ronald Leitch, who will be our first witness today, representing the Alliance for the Preservation of English in Canada. Welcome to the committee's hearings, Mr. Leitch. Our normal procedure is to have you make your submission and then we follow up with questions on the different issues you have raised in your presentation. Perhaps without further ado, I will simply turn the microphone over to you and we will proceed.

ALLIANCE FOR THE PRESERVATION OF ENGLISH IN CANADA

Mr. Leitch: I would first like to apologize for being late in arriving this morning. I unfortunately had car trouble and it is still sitting in the garage. I am pleased I was able to get here anyway.

Mr. Chairman: We can all relate to that problem.

Mr. Leitch: The purpose of this submission is to place on record the opposition of the Alliance for the Preservation of English in Canada to the acceptance by the province of Ontario of amendments to the Constitution of this country which are set out in the Meech Lake constitutional accord.

In 1982, substantial amendments were made to the British North America Act, 1867. These amendments were accepted by the federal government and all provinces through legislative enactment, with the exception of the province of Quebec. Since that time, a myth has grown up, fostered to a large extent by political posturing and aided and abetted by the media of this country, that the constitutional amendments of 1982 did not apply to Quebec because it did not sign the agreement.

Nothing could be further from the truth. This statement is supported by the Supreme Court of Canada's decision that Quebec does not have a veto with respect to constitutional amendments. Of course, there was the further decision of the Supreme Court of Canada, prior to the institution of the Constitution, when it said that it only needed a majority of the provinces as well as the federal government's acceptance of the changes.

It is the contention of APEC that Canada as a whole represents a very distinct society, a very distinct country, made up of the whole of the people of this country. To recognize the distinctiveness of the society of Canada in the Constitution is one thing; to single out one province as creating that distinctiveness is an insult to the national pride of all Canadians. The use of this term "distinct society," in our opinion infers that the distinctiveness of Canada as a country and a nation lies only in the province of Quebec. We believe that the people of this country are proud of the

distinctiveness of this country as a whole and reject the proposition that its distinctiveness lies only in Quebec.

It is APEC's contention that the designation of a "distinct society" creates a special status for the province of Quebec within Confederation. The concept of a special status for any one part of this country is repugnant to the equality of status of all people of this country. If within a family the parents show favouritism towards one member of that family, such favouritism can only lead to discord within the family unit, which in time will lead to its breakup, each member going his own way so that he will not continually be confronted with this favouritism.

Canada is a family. The provinces are the components of that family. To be continually confronted with a special status for one province can only lead to disunity and discord within the family of Canada. The designation of Quebec as a "distinct society" is the creation of a special status. The development of Canada as a nation will in the future be continually hampered by such a designation. The request by one province to have itself so designated displays a selfishness and an egotism which bodes ill for this country.

The very words "distinct society" create the notion of, and give credence to the concept of two nations. The historians of this country, as well as that eminent constitutional authority, former Senator Eugene Forsey, have repeatedly stated that the two-nation concept is a myth. Dr. Forsey has stated that the concept of Confederation as a pact between two founding peoples, two linguistic groups, relatively evenly balanced, is a fairy tale. He further stated, "Over and over again the Canadian Fathers of Confederation, French, English, Irish and Scots, declared emphatically they were creating a new nation." This constitutional accord attempts to give recognition to the pseudo-history of this country which fosters the recognition of myths and fairy tales about two nations and two founding peoples.

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To grant to the Legislature and the government of Quebec the right to preserve and promote the "distinct society" of Quebec will be a millstone around the necks of the English-speaking people of that province. Most people, in thinking of Quebec, think in terms of the large ethnic population. Too few people realize that Quebec is the fourth-largest English-speaking province in Canada and that the city of Montreal is the third-largest English-speaking city in Canada.

Quebec has already indicated, through its legislation of Bill 101, its intention to eliminate the English character of the province. Bill 101, as enacted by the government of Quebec, is repugnant legislation to the notion of equality of status of all Canadians. To give constitutional sanction to that repugnancy is, we believe, unacceptable to the people of this country as a whole.

The sections of the accord dealing with immigration are, once again, the creation of special status for Quebec. The notion that this country should guarantee to Quebec a certain percentage of all immigrants every year is totally unacceptable. It should be obvious to all concerned that the implementation of this guarantee is almost impossible of performance. Is our immigration policy to be so hamstrung that each year we have to count noses on how many people are immigrating to Quebec, and to control the immigration to the other provinces by the number of people who are taking up residence in Quebec? Is this country about to embark upon a program of telling its



immigrants where they can and cannot settle in this country so that we can satisfy this special status granted to Quebec?

It is also unacceptable that this special status of guarantee should be enhanced by permitting Quebec to exceed its quota by five per cent for so-called demographic reasons. What are those demographic reasons? That Quebec has the lowest birth rate in Canada? That people are emigrating from that province at a greater rate than immigrants are arriving? If those are the demographic reasons, it behooves Quebec to ask itself why this is happening.

Quebec is one of the wealthiest provinces in this country. It is not a have-not province. It is a province of immense natural resources, a province with a distinct location on the seaway, a province with much industry and commerce, and should be able to retain the immigrants that come to its borders. The root cause of the disaffection of the people of that province which prompts them to emigrate is, we believe, the attitude of the government of Quebec. That attitude is an inward-looking nationalism that leads to laws and regulations which many people consider repugnant, and as a result they leave the province.

It is because of this steady flow of people out of Quebec that the immigration agreement with that province which is proposed under the Meech Lake accord is unacceptable. It means that Quebec has a distinct advantage over all other provinces in determining the character of the people who enter this country and who will subsequently leave that province and settle in other parts of Canada. The choice of immigrants to this country is therefore largely in the hands of Quebec and not of the national government of this country. We do not have Berlin walls in this country. Once a person is settled as a resident and a citizen of this country, he or she is free to move wherever he or she wishes, and that is how it should be. That being the case, however, we cannot leave a disproportionate amount of the choice of immigrants to the province Quebec.

To provide in any immigration agreement that the government of this country will withdraw its services for the reception and integration of all immigrants who wish to settle in Quebec is totally unacceptable to the people of this country. It is a denial of Canadian nationhood. To go further, to say that Quebec should be compensated for the withdrawal of those services is absolutely ludicrous.

It is APEC's opinion that the final court of appeal of this country should have the best legal brains that this country has to offer, that promotion to this court should be by merit, not by language, political considerations or any other self-imposed restrictions. The moment you begin to put restrictions on appointments of this nature, there are a vast number of considerations which must be looked at. The entrenchment in the Constitution of a guaranteed number of justices from Quebec is not acceptable. The stated purpose for this guarantee is that the province has a system of civil law, while the other provinces operate under the common law.

We would not deny that this stated purpose has some merit. We do not believe, however, that the motive behind the request has anything to do with the system of civil law. It is a matter of language and culture which the French-speaking people of Quebec are continually putting forward as a reason for their distinct society. When you take with this the provision that the appointment can only be someone approved by Quebec, is there anyone who

believes that an English-speaking lawyer will ever be appointed to the Supreme Court of Canada from Quebec?

Under such circumstances, the Constitution of this country should go on to state that the French-speaking lawyers from the rest of Canada are not eligible for appointment to the Supreme Court of Canada. We in APEC believe that the people of this country would find such a proposal unacceptable. By the same token, it is our opinion that the Canadian people find unacceptable a constitutional proposal that allows Quebec to nominate and be guaranteed a fixed number of judges on the Supreme Court of Canada, and that this is an insult to the national pride of all Canadians.

When the Meech Lake constitutional accord is viewed in its entirety, one gets the distinct impression that this country of Canada is being fragmented and balkanized under this document.

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You cannot legislate acceptance and respect for a person or a group of persons. It can come only from knowledge and understanding and a willingness to work together. Acceptance is a two-way street. Willingness and understanding, if it is on one side only, will never bring about national unity.

Quebec must cease to seek special status in this country, must cease to isolate itself, must cease to build a wall around itself based on language and culture. Canada is a great country from sea to sea. It can remain a great country only if its people, all its people, have a unity in action, a unity in purpose, a unity in effort and a unity in meeting the challenges of a country inhabited by people of such diverse ethnic origins.

Mr. Chairman: Thank you very much, Mr. Leitch. You have underlined a number of major issues and you will appreciate that at this point in our hearings we have touched upon some of these but I think not always from the same perspective or focus. We thank you for your brief and for underlining some of the concerns that are related specifically to your organization.

I wonder if I might start the questioning by asking you one thing. With respect to the concerns about the immigration matter, in the actual text of the 1987 constitutional amendment it does not talk about the percentages that you refer to in your brief. Those were part of another statement.

My understanding is that whatever agreement is reached between Quebec and the federal government with respect to immigration must be approved by the House of Commons and the Senate as well as by the Quebec Legislature. At the present time, the Cullen-Couture agreement, which is the one that exists right now between Ontario and Quebec, was an agreement solely between governments; it was not debated or voted upon in the House.

Any province would now be able to enter into an agreement with the federal government, and in point of fact there are six agreements right now between different provinces and the federal government, although the Quebec one is the most extensive and elaborate.

Could the argument be made, however, that because the House of Commons and the Senate would debate any future agreement, whether between Quebec and the federal government or any other province and the federal government, that would perhaps provide greater protection than now exists in terms of what it



is that Quebec or another province would or would not be permitted to do?

I would just like to get your thoughts on that one, because I find it interesting that the agreement itself does not go into those specifics in the way that some of the preamble material did.

Mr. Leitch: I do not set myself up as a constitutional authority or an immigration authority. What I would like to say is simply this. The accord itself refers to the percentages and says that any agreement Quebec enters into must have those kinds of provisions in it, the withdrawal of services and the right to have a percentage that is increased, and the accord is only being signed because those things are in it. It says that any agreement that Quebec has must include those terms.

In other words, if the accord becomes part of the constitutional laws of this country, it would not, in my opinion, be possible for the Senate and the House of Commons to deny Quebec that percentage, that guarantee and that withdrawal of services and payment. I think that would have to be part of it. I feel the only way in which you can control that at all is by the rewriting of the resolution which is proposed for adoption by all the legislatures. In fact, in some of these things, in immigration, you have to get back to the very basics before you are going to be able to come up with something which is going to be acceptable to all the people of this country.

You know as well as I do that people in this country move around to a great extent; people move from province to province. That did not happen when I was a youngster growing up in this country, but in the last 20 years, the way in which people move from province to province is something that has amazed me, and that is going to continue to happen. My feeling is that we are giving Quebec an unfair advantage, or giving the rest of the provinces a disadvantage, in this respect, if we go along with these immigration proposals.

Mr. Chairman: I think you underline another aspect which could be troubling, which is the right of movement as set out in the charter, the whole question of mobility rights. I had thought they were trying to deal with that in the accord. In subsection 95B(3), they note that the Canadian Charter of Rights and Freedoms applies in respect of any agreement, again, whether with Quebec or others.

As I understood it, the reason for putting that in was to ensure that at present and in the future, if any immigrant arrives in Quebec, Ontario, wherever, and tomorrow morning wants to go to Vancouver, there is nothing that can interfere with that right, and I do not think we would want anything that could interfere with that right.

Mr. Leitch: I am probably not expressing myself very well, because we want those mobility rights to remain. We are not for tampering with mobility rights at all.

What I am really saying to you is that, in the selection of people who are going to come into this country, the type of agreement we see is going to be brought about as a result of this accord gives to the people of Quebec and the government of Quebec an advantage over all other provinces in the total number of people who are coming into this country. I say that is not fair; it is not fair to guarantee them.

If people do not want to go to the province of Quebec, they should not have to go. If people want to leave, they should have the right to leave. Why



set up a special status for this province so that it can, in fact, control immigration? What you have to understand is that, in fact, these agreements allow the provinces to establish the point system, the quota system, and the basis on which people are going to be allowed into their provinces.

In fact, Quebec has its own point system now. If you were immigrating to Canada and spoke either the French or the English language, you would be awarded five points towards your immigration status. If you were applying through the province of Quebec and you were French speaking, you would be allowed 15 points. If you were an English-speaking person coming to the province of Quebec, you would be allowed two points.

We are setting up a system whereby the province of Quebec can determine the character of a large portion of the immigrants to this country, because their portion of the immigrants is based on their population. Because they have a population in excess of six million, they have an opportunity to determine the character of the immigrants, of a lot of people in this country. We find that unacceptable.

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Mr. Chairman: I appreciate your point and I do not have all the answers to that. The only thing that struck me was that what is different or would be different is that any agreement reached in future would have to be voted upon by the House of Commons and the Senate. At the present time, they have no role at all in any agreement with any province.

It seems to me that one of the ways to protect, let us say, a national interest, whether it is with respect to Quebec, British Columbia, Ontario or Newfoundland, is the concept that the House of Commons and the Senate are involved. I like that. It is not just a kind of executive decision but indeed one that would have to be debated fully.

For example, the very points that you have just raised would have to be aired in the context of whether this is something which we, assuming we were in the national Parliament, would see as something that was acceptable. But I appreciate your points. What we are doing here is just trying to explore.

Mr. Leitch: I think that is an improvement, because before it was just an administrative and executive decision. That part of it is probably an improvement. What concerns me is that the moment you grant to Quebec a distinct society status or designate it as a distinct society, whatever you debate in the House of Commons or in the Senate is going to have to reflect the terms of the overall agreement of Meech Lake.

You are going to have to make your decisions within that, because they are going to say to you: "Look, this is in here. We are entitled to this kind of consideration." Even though it is going to go before the House and the Senate, I do not think that leaves the House and the Senate much room for movement.

Mr. Matrundola: I want to welcome Mr. Leitch here. I have known him for many years. I congratulate you on your fine presentation, so eloquently spoken.

Mr. Leitch: Thank you very much.

Mr. Matrundola: It has been a pleasure. I think you are a concerned Canadian and I personally welcome your presentation.

Mr. Harris: I too welcome you, Mr. Leitch, to the committee. I agree with you on immigration. It causes me problems as well. I am not so sure that I have as many concerns with the Supreme Court as you have, but I want to ask you about this distinct society. Many people have come before us and many talk about the worst-case scenarios and how that would affect them, be they women's groups or groups concerned about national programs and social programs.

I want, if I can, to set a scenario for you and I would like your reaction to it. Many have come before us, the majority I think, on "distinct society" and said that they interpret the distinct society of Quebec to include the English minority. I think everybody agrees with you that we are all distinct and that we are all unique in many ways. But when it comes to language--and culture, if you like, but let us just leave it with language for now and everybody can extrapolate that however they interpret it--Quebec is distinct or unique within Canada as a province in that the French language is the majority in that province and it is not that way in the rest of the provinces. English is the majority language.

I think you would agree that when we are talking about "distinct society," we are talking about language and whatever that definition is of language, and we are not talking about many other things that make us all distinct. In that one regard, Quebec is distinct.

As I say, many have said that definition of distinctness includes the English minority and the French majority. The second provision in there is that all provinces, including Quebec, must recognize and protect minority language groups. That is also in the interpretive section. I think I accept that this is the interpretation that is most likely to come out of this agreement.

I realize I am hypothesizing--if that is the right word--but most of those opposed to this agreement, the Trudeauites, if you like, the people who say, "We have a different vision of this country than Quebec, which is more French than the rest of Canada, and the rest of Canada, which is more English than French," have, like you, a vision of everything as equal and the same.

Quite frankly, in my view, their vision of Canada is that the rest of Canada will be so French, so bilingual as to be acceptable to Quebec. They will no longer have to fear for their language, their culture and their distinctness. Meech Lake says: "No, that is not necessary. We must protect the French-language minorities in the other provinces and we must protect the English-language minority in Quebec, but we can recognize that Quebec is distinct, is different and is, if you like, the motherland or the mother province of the French language and culture in Canada."

I guess that if you accept all those scenarios I am laying before you, for somebody who is concerned about the preservation of English in Canada, Meech Lake is the very minimum and in fact preferable to the duality of the Trudeauites and their vision of Canada. I wonder if you could comment on that.

Mr. Leitch: I find it impossible to accept the kind of scenario you are putting forward. I do not consider myself a Trudeauite, so I do not think I am trying to set out the kind of proposition that Trudeau was espousing. What I have to say to you is, if you want to know and to understand what words in a statute mean, you have to look to the implementation that takes place as a result. The province of Quebec today has legislation, Bill 101, which suppresses the English, the English-speaking people and the way in which they conduct their business, their signs and their advertising.



It does all this without the Meech Lake accord, without saying they are a distinct society. I challenge you to go to Quebec, to the English-speaking people, to the workers in those places and talk to them. They will tell you, "We feel like an oppressed people in this province because we are English-speaking." I have spoken to them and I know that is the way they feel, like an oppressed people because of language and culture.

Mr. Harris: I understand all that.

Mr. Leitch: If you add to the powers of Quebec by calling it a distinct society and giving it the right in legislation to in fact protect that distinct society, you are giving constitutional authority to the oppression of the English-speaking people of Quebec. Whatever you say about Quebec's distinct society, in fact it has two large groups of people within it, the larger being the French. I read those words in the Constitution as well, and I say to myself, "What does it mean?" because in fact without those words those people are being hamstrung in that province.

Mr. Harris: That is fine. If that is not what it means, then in your view the country will be making a terrible mistake, but if "distinct society" means there is a majority of French and a minority of English and standing beside it is the obligation to preserve and to protect the rights of the minority, if in fact that holds up, are you then concerned about "distinct society"?

1050

Mr. Leitch: My concern is that by past performance it will not hold up; it will not happen. I am convinced in my own mind that, if the Meech Lake accord goes through, you will find that the English-speaking people in Quebec will be subjugated. I think they will leave that province in greater droves than they have left now.

I spoke to a doctor in Montreal who told me that he was treating English-speaking people for the stress that is created by Bill 101. He said, "I am doing it on a daily basis." These people are under constant stress and threat because of the French language and the French culture and the way they are being applied by that province. If you take that sort of scenario without a Meech Lake accord, what can happen when you have a Meech Lake accord? I do not agree that the English-speaking people of Quebec are going to be protected by the Meech Lake accord at all. I do not believe that will happen. I really do not.

Mr. Harris: What about the French-language minority outside of Quebec? A number of the groups share your view that Meech does not provide protection for the minority. In their case they are concerned about the minority French-speaking language outside of Quebec. I find it a little ironic, and maybe it is just because of how all the interpretations come together, that l'Association canadienne-française de l'Ontario and the Alliance for the Preservation of English in Canada are coming to me saying exactly the same thing.

Mr. Leitch: I suppose for different reasons.

Mr. Harris: I thought there might be some different reasons.

Mr. Leitch: You will excuse me if I refer to the history of this country. I am not an historian. I am not an authority on the Constitution. But



I have done a lot of reading that a lot of other Canadians have not done. I want to say to this group here today: Examine the historical documents of this country right from the times of the Plains of Abraham up to 1867 and show me one document that has any reference to language at all. There is only one and that was the Act of Union of 1841 which made English the official language of this country.

In 1867, we had the British North America Act. There is only one section out of about 150 sections that has any relation to language whatsoever. That is section 133, which says that the Legislature of Quebec and the courts in Quebec may use either the English or the French language. The Parliament of Canada and the court created by that document, which is the Supreme Court of Canada, may use the English and the French languages.

There is nothing in that document which says that the civil service of the province of Quebec should be French. There is nothing in that document which says that the civil service of the government of Canada should be French or bilingual. Absolutely nothing. Language laws and language difficulties in this country were created in 1969 with the passing of the first Official Languages Act. That is when it all started.

Before that, gentlemen, there were no language problems. Donald Creighton, an eminent historian, said--I do not have his quote right here and I am not saying it word for word--that the people of Quebec got exactly what they asked for in the British North America Act of 1867. They asked for no more language rights than were set out in section 133 and they were given those language rights in 1867. He said that is supported by the constitutional documents of this country.

We are creating these problems for ourselves right here in this country now by creating something that did not exist, something that was not the basis of Confederation at all.

Mr. Breaugh: I have a couple of quick questions. You have given us your opinion on the existing immigration agreement between the federal government and the province of Quebec. Do you have any comments on the other five existing immigration agreements between different provinces and the federal government?

Mr. Leitch: No, I do not. As I mentioned earlier, I think probably before you came in, I am really not an authority on immigration. All I am looking at is what the Meech Lake accord itself said would be in any agreement which was for Quebec. I do not know what was in the other agreement. I do not even know what is in the existing agreement for Quebec. I am looking only at the Meech Lake accord which says that, in any agreement with Quebec, certain things are going to happen, certain things are going to be there. Those are the three things I mentioned in my brief. I really cannot comment on the others.

Mr. Breaugh: That is not quite true, but do you have any objection to provincial governments entering into immigration agreements of any kind with the federal government?

Mr. Leitch: I have not really given too much thought to that aspect of it, but what I would say is that, in my opinion, any immigration agreement should not create any special status for any one province, no matter what that province is; no special status, no special setup so that it has an advantage over other provinces, and I think that is what the Meech Lake accord does.

Mr. Breaugh: So you would argue now that six of our 10 provinces are operating improperly by means of having an immigration agreement of any kind, that they should not have such things?

Let me just explain a bit. Each of the immigration agreements is, essentially, a province saying to the federal government, "These are the conditions under which we would like to receive immigrants." For the most part, they talk about the kinds of skills they would like to see brought into their province. In a nutshell, what we are talking about here is that each of the provinces has traditionally said to the federal government, "These are our needs as a province, so when you are doing immigration matters, these are the kinds of people we would like to have streamed into our area."

As a matter of fact, I think most of the members of the committee were unaware that there were this many immigration agreements and had not seen them until we began these proceedings, but perhaps that is saying something: they were in operation and working in six of the 10 provinces and not causing any problems. They did not seem to cause a problem until somebody saw it mentioned in the Meech Lake accord.

Mr. Leitch: Yes, you see, it is my understanding of the British North America Act of 1867 that immigration was something that was going to be a joint undertaking of the government of Canada and the provinces.

Mr. Breaugh: Yes.

Mr. Leitch: I think that has been part of our history since Canada became a country. I cannot take exception to the fact that that is the way it was thought immigration should work. What I am taking exception to is that any province should be given in our Constitution an advantage over another province in the question of immigration. I believe that what the Meech Lake accord does in fact is give an advantage to Quebec; it gives it a special status that none of the other provinces would have.

Mr. Breaugh: OK. I do not think very many people would agree with you on that.

Let me just pursue one other area. You have got quite a spirited attack going here against the Supreme Court of Canada. You have a description of the existing process whereby we appoint people to the Supreme Court, the makeup and why, all of that. What leads you to believe that is wrong? What problems do you see now in the existing makeup of the Supreme Court that would warrant such massive changes as you are proposing here?

Mr. Leitch: I am not proposing any massive changes at all. I am saying, "Don't put those proposals that are in the Meech Lake accord into--"

Mr. Breaugh: They are not. That is the problem. You have a description here of the existing process whereby we appoint people to the Supreme Court of Canada. You are saying it is quite wrong. That process is not addressed in the Meech Lake accord. There is a different process that is addressed there.

Mr. Leitch: It is not the process. It is the guarantee, a guarantee which is being given in the Meech Lake accord to Quebec.

Mr. Breaugh: No, excuse me. I must be reading a different document. I see no guarantee. I only see in the Meech Lake accord an agreement that each

of the provinces will now assume the responsibility for putting forward nominations. They do not have the right to appoint. There is nothing in there that talks about the makeup of the court, who comes from where, who has a background in what. None of that is contained in the accord. You have taken the time to put a rather spirited position here. I want you to elaborate on it.

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Mr. Leitch: It is my understanding from the Meech Lake accord that what is happening here is that, first, under this agreement, the government of Canada cannot make the appointment.

Mr. Breaugh: No. That is a question--

Mr. Leitch: I agree the government of Canada is going to make the appointment. There is no question that the appointment is going to come from the government of Canada, but it cannot make that appointment unless the person who is being appointed is approved and on a list given to the government by the province from which the appointment is coming. It is my understanding that is the way this is going to be. From now on, the provinces will have their own lists and the government of Canada, while it makes the appointment, is going to have to choose from the list it has.

In addition to that, the accord document itself says that Quebec shall be guaranteed three persons sitting on the board.

Mr. Breaugh: Excuse me. That is not in the document at all. That happens to be our practice now. That has nothing to do with the Meech Lake accord. I would appreciate your argument a bit more if you were saying that none of the provinces should have the right to nominate people for the Supreme Court of Canada, which some people have argued, that the people of Canada do not have a right to know where these nominations come from and that in general terms not one of the provinces should have such a right.

I do not subscribe to that point of view, but that certainly has been put to the committee. Much of what you are discussing here is not part of the Meech Lake accord. That is current practice. If you want to marshal an argument against the current practice, I would like to see a little more in the way of specifics of how the courts malfunction or something.

Mr. Leitch: I do not have my Meech Lake accord document with me and I--

Mr. Breaugh: You do not carry it next to your heart, as we do?

Mr. Leitch: So I am sorry, I cannot elaborate any more than I have. It is my understanding that there is going to be a guarantee given to Quebec and that is why it is in my brief. I believe that when Quebec put this kind of proposal for guarantees forward, what is behind this is a question of language and culture and not necessarily qualification.

I am not saying they are going to put a dough-head up for the Supreme Court. I do not want to appear to be that ridiculous. What I am saying is--

Mr. Breaugh: We have one for Prime Minister. I do not see why the courts should be different.

Mr. Leitch: --that the consideration will be language and culture. That is why I made the comments I did.



Mr. Breaugh: Let me just conclude with one final little point. A lot of us have been troubled by minority language rights in Quebec. Where I have some difficulty with it is that I do not deny for a moment that the government of Quebec has a legal right, being properly elected, to pass laws, even laws I do not like. The best I can offer to anybody is that if they pass a law and you do not like it, you can challenge it and go to court. That in a nutshell is what is happening.

Quebec passed a language law which some people did not like. They are in the process of taking that law to the Supreme Court of Canada, ultimately. It does not get any better than that in a democracy. You sometimes elect wrong governments. They sometimes do things which I personally do not like. I am still trying to find out who elected Brian Mulroney; nobody will admit to that. But these things happen in a democracy and the best we can offer to people is that if you do not like the government of a given province, you can throw the bums out at the next election. In the meantime, you have a legal right to go to court. That is as good as the democratic process can offer to anybody.

I would like you to comment on that a bit, because you did spend some time talking about one specific law in Quebec. I think it is fair to categorize it as a general attitude on matters of language that at least two duly elected governments in Quebec espoused. Whether we like them is another matter, but we cannot get away from the fact that the people of that province elected both the Péquiste and the current Liberal governments. Both governments put forward language legislation of a similar nature and both have had their laws tested before the Supreme Court. Sometimes they hold up and sometimes they do not, but that is what a democracy is about. How do we get around that little awkward problem?

Mr. Leitch: I would be the first one to agree with you that in fact Quebec has the power to enact the legislation it has enacted. I would not take exception to that at all. They have the power. We have the power to do just the reverse here in this province, if we so desire, and so have all the other provinces. Language is in this provincial sphere and is a proper subject for legislation in each of the provinces.

The difficulty I have with the problem is that here we have a country which espouses official bilingualism, which is the creation of an artificial need for the use of the French language in government, in government services. The government, in its implementation of that, has done all sorts of things across this country to bring about a status of official bilingualism in all the provinces. Never, at any time, has it--I am talking about our government now--ever challenged Quebec on its legislation.

In all these things it is a question of implementation. You legislate and then you implement. If you read the legislation and you look at it and say, "That is what it is," and then you go and find that a different interpretation is being put on it, when it comes to the question of its implementation, I find great difficulty.

For instance; if you take the Manitoba crisis in 1984 and 1985, the government of our country passed a resolution in support of the Pawley government's resolution for official bilingualism and French-language services. But when Bill 101 was passed in the Quebec Legislature, they did not pass any resolution which said: "Hey, you should not be doing this. We are an officially bilingual country." They did not do that kind of thing.

They spent hundreds of thousands of dollars advertising in 1984 and 1985

in Manitoba. They did not do it then. When the challenges to the Manitoba Act were done, they spent hundreds of thousands of dollars in taxpayers' money to bring those people to the Supreme Court of Canada and give them an open track. Do you know that it has taken 10 years to get the challenges of Bill 101 before the Supreme Court? Mr. MacDonald's case on his traffic ticket was only heard about a year ago. Mr. Singer's case on his sign was only heard last November before the Supreme Court. Those actions have been going on now for some 10 years to get to the Supreme Court of Canada.

It is the implementation. It is what is happening when these language laws are being implemented that leaves so many people upset. Some people say to me, "Look, Bill 101 is provincial legislation and it has nothing to do with Canada and, therefore, there is nothing that Canada can do about it." My only answer to that is this: The people of this country do not separate it and say, "There are so many items for consideration by provinces and so many items for consideration by the government of this country and never the twain shall meet."

The people do not look on the separation of the powers of provinces and the Dominion. What they do is look at what is going on in the country as a whole and, in the one country, they see a province which is declaring itself unilingual and they find that the rest of the country is being forced to be bilingual. That is the kind of thing that upsets the people because they do not make the distinctions that legislatures do between spheres of activity, between provinces and countries. They look at what is happening as a whole.

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Mr. Morin: Mr. Leitch, you indicated that all Canadians should have the same rights and that differences among Canadians should not be promoted in the Constitution. If Quebecers say that they require--

Mr. Leitch: Where did I say that, sir?

Mr. Morin: You mentioned that everybody should have the same rights.

Mr. Leitch: I think there should be equality of status.

Mr. Morin: If Quebecers say they require special protection of their culture in order to be comfortable within Confederation, do you think their concerns should be addressed?

Mr. Leitch: I think we have addressed them. We have addressed them on a number of occasions. We have addressed them to the extent that it is now acting to the detriment of this country, and I believe that. I believe that the continued unity of this country is being affected by the continual harping on special status for Quebec. I believe that with all my heart. I do not want to see the breakup of this country, believe me. I do not want to see it, but somewhere down the road it is going to happen. Believe me; it is going to happen. If we keep on going the way we are going now, creating special status after special status for one province, Confederation will never last.

Mr. Morin: The Meech Lake accord places each province on an equal footing when it comes to constitutional reform. It provides a guarantee to each province that its rights will never be trampled by the majority of provinces. Is that a bad thing?

Mr. Leitch: I suppose you could answer yes or no to the question,

and if all questions were that simple, then we would not be here today. You cannot answer yes or no to the question, obviously. I think that there has to be a spirit of co-operation and willingness between provinces to understand and to work with each other. I do not think we are experiencing that today. I do not think we are experiencing it at all.

Mr. Morin: One of the witnesses was Gordon Robertson, who was a senior adviser to Mr. Trudeau, and he made quite a statement. He said that the failure to implement the accord may well be the beginning of the road to separatism. Could you comment on that.

Mr. Leitch: I would say that the implementation of the accord will lead us well on the way to separatism. I believe this country is being balkanized by this document. I think we are being fragmented. The question of unity, the question of nationhood is being challenged by this document, and I do not like it.

I gave six years of my life and laid my life on the line for this country and for the freedoms and rights which existed at that time. I do not want to see someone come along and chew that six years of my life up by making constitutional arrangements which are not acceptable to the vast majority of the people of this country, and that is what is happening with the Meech Lake accord.

Mr. Morin: What you are saying, in reality, is that if the accord were not to go through, you would not care whatever happens to Quebec?

Mr. Leitch: I never said that at all; you are putting words in my mouth. What I am saying is that if the Meech Lake accord goes through, this country will be fragmented and balkanized and eventually there will be separation anyway. That is what I think.

Mr. Chairman: Thank you very much, Mr. Leitch, for coming here this morning and presenting your thoughts and reflections and views in a very forceful manner. I suppose one of the good things about the country is that on issues like this there are strong differences of opinion and we are one of the fortunate countries where those can be expressed in all political forums. I think that is certainly a distinctiveness about Canadian society that we all want to preserve. Whether we all agree with every sentiment or thought that each of us might have is not really the case, but those can be presented. We thank you for coming this morning and for your brief.

Mr. Leitch: Thank you very much. I want you to know that I too believe in democracy and that when it comes to a question of what are going to be the laws of this country, if the Meech Lake accord becomes law, then I have to accept it live with it. I am content that this is the way it has to be in a democracy and I thank you very much for the opportunity of being here and for being able to freely express my views on this subject.

Mr. Chairman: If I might then call upon our next witness, Mr. Nicholas Tryphonopoulos. Please be good enough to come forward. We have a copy of your statement. In order to ensure you have plenty of time to make it, so we can enter into a good discussion with you, I will say welcome and turn the mike over to you.

NICHOLAS TRYPHONOPOULOS

Mr. Tryphonopoulos: I would like to thank you for the opportunity to



bring to your committee my concerns about the Meech Lake constitutional accord. I would like also to express my appreciation to the staff of the clerk's office for being helpful.

My presence here today is due to the publicity given to these hearings by the Ad Hoc Committee of Women on the Constitution. I believe many people are grateful to that organization; certainly I am.

I have watched many sessions of your committee on television and I know that many competent and concerned persons, such as the Honourable Don Johnston and lawyer Morris Manning, have stated their reservations about the accord. I share their reservations and will not try to repeat what they have already so eloquently told your committee. You will agree with me that these persons are not enemies of the Quebec people. They are simply deeply concerned about the future of this country, and for their concern, I am grateful.

I think that after several weeks of hearing the same objections over and over to the "distinct society," the opting-out clause, the amending formula and all the other alleged deficiencies of the accord, it might be appropriate to take a somewhat different approach in my presentation.

First, what do we, the people who have trotted before your committee, represent? In your view, do we represent the people of Ontario or are we some concerned citizens? If the first is true, which I doubt, then the people overwhelmingly have spoken against the accord as it stands today. On the other hand, if we are some of the concerned citizens, then the voice of the people of this province has not been heard on an issue fundamental to the development of this country.

Does the voice of the people count for our leaders, the Premier (Mr. Peterson) and the party leaders? Does it count for our members of parliament, for the members of this committee? I would like to know very much if it does. If it does, how do you plan to hear the voice of the people of this province?

It is my view that not only have the people not been heard from, but even worse, they have been kept in the dark about the implications of this accord. Very skilfully, the elites of all three parties have presented this accord as an initiative to bring Quebec into the constitutional family of Canada. Who could object to that? Besides, the public has more immediate concerns: taxes, insurance rates, rents, among others. The effects of the accord will be felt some time further down the road.

By any standard, the media coverage of the accord has been sporadic and unimpressive. As for serious, comprehensible analyses of the accord, there have been very few. From a little research I did, I found there were no statistics available on the coverage of the issue of the accord for the CBC's The Journal and CFTO. As for TVOntario, its program Speaking Out dealt with this issue in November of last year. I have to give credit to the Toronto Star for doing a better job in this case. Meanwhile, we are well informed about the developments in Nicaragua, Panama and Israel.

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I realize that the government and this committee cannot dictate to the media what they will cover, but as you know, politicians have ways to attract media attention to issues of their own choice. Meech Lake has not been one of them.

Notwithstanding the above, it is in my view one of the responsibilities

of a member of parliament to bring to the attention of his or her constituents important issues and to solicit their views. A little informal survey I carried out among friends revealed that none of them had heard from his member of Parliament on the Meech Lake accord, neither at a constituency meeting nor by mail. I assume this is not a typical case. I would be grateful to you, Mr. Chairman, if you could provide me with any information you may have about the action of your colleagues in the Legislature on this matter. Today, I would be happy to hear from the members of this committee on their own activities in informing their constituents about this issue.

I do realize that once the accord had been signed by the first ministers, it created expectations from the people of Quebec. It would create a crisis to reject it and forget about their legitimate aspirations. But in my view, it is the easy way out to say, "Let's adopt it as it is and hope for the best." In our effort to avoid the difficulties that we will have to face today if we reject Mr. Bourassa's demands and ultimatums, we risk the possibility of creating the dynamics for worse complications for the Canadian Confederation in the future, and then the problem may not be Quebec but any other province.

Up until now, the work of this committee has contributed to clarifying to a large extent the implications of the proposed amendments of the accord. I respectfully suggest that in the next stage of your work you focus on the following:

(a) Establish whether there are divergent opinions among the signers of the accord on the implied powers of the "distinct society" clause. Mr. Rémillard, Mr. Scott and Senator Murray could state their views to the committee on this clause in person or in writing. At least your colleagues in the Legislature will know what they are voting for.

(b) Set certain criteria for considering whether the accord will contribute in the long run to the improvement of the lot of the people of this country, and in particular, the native people and the people of Quebec. Among the criteria I would certainly include is the degree to which the amendments infringe on the Charter of Rights and Freedoms of the people, protect our democratic rights from the powers of the political elite, promote unity among the regions and people of Canada and allow flexibility for the evolution of the constitutional document in the future.

(c) It is worth examining how the contention of the political elite of Quebec that the Meech Lake amendments were necessary for the protection of their culture and their national economy is reconciled with their enthusiastic support of the free trade pact with the United States. One wonders whether the anglophone cultural elite exaggerates the danger to its interests.

(d) Examine whether administrative or legislative arrangements could satisfy at least some of the demands of Quebec without having to add constitutional amendments. Such possibilities were identified by the participants of the Mont-Gabriel conference in May 1986.

I do realize that in order to accomplish these suggestions, your committee needs more time and most likely a commission to carry out the job. So be it. We have followed this path on so many issues which were much less important than the proposed changes to our Constitution. I hope that you will not be unduly influenced by the political agendas of the leaders of your parties.

I conclude by pleading with you that whatever the recommendations of

your committee will be, at least object to the request for expanding the unanimity requirement. It inhibits the constitutional evolution of this country. I am not an alarmist. I have faith in the love of the people of Quebec for this country. Thank you.

Mr. Chairman: Thank you very much. You have raised a number of interesting questions. I have enjoyed the fact that you have thrown a number of questions rather directly back at members of the committee, if not the members of the Legislature. It does raise a whole series of interesting observations on process and this whole question, especially with constitutional discussions, of the role of elites versus how the ordinary person, however we define him or her, is involved in this. I am sure that as our questions proceed, we will, I hope, get into some discussion of that.

Miss Roberts: Thank you, sir. Your brief was excellent, to the point and gives us many things to think about. To carry on from what the chairman has just said on process, I can see you have thought about that a lot, not only the process we are going through now, but also the process we went through to get to this point. I have read through your suggestions of what we should focus on now. Could you briefly fill me in on what you considered, along with the process, up to this point?

Mr. Tryphonopoulos: I would be happy to. First of all, I know that a lot of the members of the committee in the past have emphasized what was traditionally done in the past century or whenever, and it is true that if one goes back and maintains the tradition, there is no hope for any change. But presumably nations have evolved. One expects that these are going to become better than the Family Compact situation.

In this particular case, the least I expect is to have every member of parliament vote freely without any imposition of directives from the leader or the party. I would feel much happier seeing more discussion, in a very simple way, of the Meech Lake accord with the people. As I pointed out, the media have not done a good job in my judgement. The schools have not done a good job and the universities have not done a good job. I have observed that a lot of academics came here and spoke, but who listens to them? Very few people. At least in this particular case, I say, do not accept that we have to be bound by what the leader has said on this.

I realize that Mr. Peterson feels a little bit awkward because he has signed the accord, and this in a way binds him. On the other hand, I would probably expect the members of parliament to have first loyalty to the people and then to the leader. All of us will make mistakes.

Miss Roberts: If I might capsuleize, you are saying that you do not disagree with the process to get to the Meech Lake accord. The signing of it and sort of saying, "Here it is," is the part you disagree with.

Mr. Tryphonopoulos: Yes.

Miss Roberts: You think those persons in the Legislature who are going to be voting on it should use their own best political judgement with respect to that.

Mr. Tryphonopoulos: Absolutely.

Miss Roberts: You are not suggesting that there be a referendum to deal with the Meech Lake accord or anything further than that.



Mr. Tryphonopoulos: If I had a choice, yes.

Miss Roberts: That is what we want to know, what your choice is.

Mr. Tryphonopoulos: Right. Practically, probably this cannot be done at this stage. Certainly, if there is a significant--at least the unanimity part is very significant and deserves a referendum. Again, it might not be practical at this stage. But I will not be satisfied to have my MPP tell me, "I had to vote because my leader said I had to follow the party line."

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Miss Roberts: Did you think of what you will do for the future, whether Meech Lake passes or not? We know there are some difficulties in our Constitution that are going to have to be met sooner or later and dealt with. There is growth in our country, the evolution of our society in Canada as well, that is going to have to be met.

Have you thought about the type of process that you might like to see? Forget about Meech Lake. This is the first time, I believe, that legislatures have had a chance to have committees, and that we really have had the right to deal with a resolution that is before us. Have you thought of any other process? Would you like it entrenched in the Constitution, or should it just be in each provincial House as well as in the House of Commons and the Senate?

Mr. Tryphonopolous: Again, I am not a constitutional lawyer, but I think it would be a good idea to make provision for a committee either appointed by all the parties from each province or even elected by the people for a long period of time, six or eight years. These people would have the job of reviewing the Constitution and the amendments and bringing to the attention of the people the implications of these amendments.

Miss Roberts: You are talking about a national committee?

Mr. Tryphonopoulos: Eventually you are going to form a national committee, but each province will elect its own people. Again, they will not have the power to force the amendments, except to discuss and make an informed evaluation of the amendments for the benefit of the people and probably the legislators.

Miss Roberts: Thank you for your answers. They are very direct and topical.

Mr. Eves: The previous questions have already answered most of my questions, but I did want to compliment you on a very well intentioned and, I believe, well-thought-out presentation.

I would like to respond to some of your questions. With respect to what committee members are doing in their own constituencies about informing the public, I have a weekly radio program on four different radio stations in my riding, and have had for some seven years. I can assure you that the Meech Lake accord has been the subject of discussion on that program no less than at least half a dozen times in the last few months.

Mr. Tryphonopolous: Great.

Mr. Eves: I have weekly newspaper articles in four or five different newspapers, and I can say the same about those as well. I suppose I should

mention the Queen's Park Report, which is a report that many members issue to their constituents two or three times a year.

I would like to say at the outset that I agree with points A, B and D that you make. I am not so sure that I agree with point C in your presentation.

I think your point in point A is very well taken indeed, and the committee would be well advised to do that. I quite agree that there are some areas, especially the infringement upon individuals' rights of Canadian people in the Charter of Rights and Freedoms, which may or may not be infringed upon by the Meech Lake accord depending on which constitutional lawyer or expert you listen to at one particular moment in time.

I would like to point out to you that with respect to point D, which I think is a very good point, several delegations and witnesses that have appeared before the committee before you--and you are probably aware of this--have suggested the idea to the committee of the companion resolution or companion resolutions, and I think that is one area that indeed the committee should consider looking into.

I thank you very much for your presentation.

Mr. Tryphonopoulos: Thank you.

Mr. Allen: I am delighted that Mr. Tryphonopoulos has come before us and is going to help make up the gap he feels that exists in the representation of the people of Ontario before our committee. We have indeed tried, of course, very hard to let people know these proceedings are here and are available to them. We have said no to none that I am aware of. With the TV coverage that is happening, I think there is a widespread awareness that this is at least going on.

I suspect you are right that some aspects of media coverage could have been better, but it is always difficult to get one's voice as a member certainly heard over all the conflicting claims that people have and the other interests that they do have. Like Mr. Eves, and I am sure other members of the committee could repeat something of his story, I have dealt with it in a variety of forums; but in particular, I have written about it in the local newspaper so that people are aware of some of the issues that are concerning us on the committee.

With respect to the first point that you suggest, number A, for example, I think we have had people telling us what their views are of "distinct society." Our problem, of course, is that Mr. Murray, Mr. Rémillard, Mr. Scott, Mr. Mulroney and the others tend to say somewhat different things. I am afraid that will go on being the case because Mr. Bourassa has a vested interest in exaggerating his accomplishments for the people of Quebec, while Mr. Mulroney has a vested interest in telling Canadians: "Well, it isn't going to do a great deal. Don't worry. It isn't going to disturb your breakfast tomorrow morning." Whether it helps us to ask them once more to say those things, I have some very serious doubts.

It is indeed a curious matter for some of us that, on the one hand, the province is very concerned about its own identity and protecting its cultural interests in North America and, at the same time, runs very strongly on the question of free trade. My own sense of that, from articles I read in *Le Devoir*, is that they do feel they have a kind of protection in having their

own language and if they are protected in their language and culture, in more general fashion, they do not have much fear about the capacity of English-speaking Americans to sort of readily penetrate and compete with them on their own turf. They have got a built-in barrier that the rest of us do not have on that business, and I accept their argument that they perhaps are not as exposed as the rest of us.

I wonder if you could tell me a little bit more about something that is a new note for me, and that is in item D, where you suggest that we should "examine whether administrative or legislative arrangements could satisfy at least some of the demands of Quebec without having to add constitutional amendments." Then you add: "Such possibilities were identified by the participants of the Mont Gabriel conference." My limited knowledge of all the proceedings of the Mont Gabriel conference do not bring back to my mind a memory of those suggestions. Can you tell us in some detail what they were or what the proposals were?

Mr. Tryphonopoulos: The unfortunate thing is that the document that I read myself on the Mont Gabriel conference was not extensive; it was more or less summarizing the proceedings. They mentioned there that they felt a lot of the economic concerns that the Quebec government presented at the time through Mr. Rémillard could be satisfied by changing the legislation, or by certain political agreements or administrative arrangements. Again, they did not identify specific things. I recall that they were saying something about the need to co-ordinate or harmonize the stock markets, but again they did not go into any details. I am sorry I cannot give you more information.

Mr. Allen: Thank you. It might repay our searching out that document to see just what the contents of those proposals were.

Mr. Tryphonopoulos: Right. By the way, I feel it is a privilege to come and express our concerns, give our opinions or make suggestions; but I and many other people who came before you are not experts in many, many things. That is why I feel this committee should press for some people who have expertise on different matters that relate to the accord. As I said, probably a commission is the only way that you can do the job and inform yourselves. I have the impression that eventually, when you get through with this part of the hearings, you might have more questions yourselves than answers to the concerns that the people have presented to you.

Mr. Allen: I think that is often the case. The more answers they get, the more questions they have.

Mr. Chairman: The amount gets larger every day.

Mr. Tryphonopoulos: I sympathize with you and I do not envy you.

Mr. Allen: Finally, I just want to say that I appreciate the point Mr. Tryphonopoulos has made that most of the people who have been coming before this committee have not been opposed to the proper aspirations of Quebec.

Mr. Tryphonopoulos: Not at all.

Mr. Allen: They do have a genuine national interest. In that respect, I think there is a new mood in the country that comes across that there is a lot of openness to Quebec, but people do have legitimate questions about some of the implications of some ways of responding to that. I appreciate that.



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Mr. Chairman: In closing, just in response too to your question earlier, one of the difficulties that I guess all members have with the number of issues, especially constitutional issues--and I think you phrased it as how to raise some of those issues, because it can get so complex--on the one hand, there is a need to listen to "experts" and yet, like so many things, you can find experts who are on both sides of the issue. I suppose it is the way we joke, and I say this with respect, about economists on a number of issues, and so you also want to get a feeling of what is a kind of broad perception of what people think the accord means, or any sort of constitutional change.

I think a number of members around here, at least, have in different ways addressed the issue, but probably everyone would say it is at times difficult to find a proper way or an appropriate way to really have a discussion with people about some of these issues.

Miss Roberts was asking some questions around the whole business of process. I think one of the challenges we have, as legislators, in our own report is to come up with recommendations regarding process that will ensure not only that there will be a public participatory aspect but also that it can be meaningful and that people do not have to feel that they need the experts. We are not experts around this table--although I suppose after six weeks we may be beginning to think we are, but we are not--and I do not think we ever want to get to the point where constitutional amendments are decided only by experts. We need a variety of points of view, and then finally we have to have a sense of how that responds to our vision, I suppose, of what our country is all about.

I think you have really underlined an aspect there in terms of how this whole issue and other constitutional issues are in fact discussed and debated in this country. I want to thank you very much for coming this morning and sharing those thoughts with us and for sharing the four specific points about how we might look at our mandate and continue from here. We accept your comments that it is not an easy task.

Mr. Tryphonopoulos: Thank you very much. I appreciate it.

Mr. Chairman: I now call upon the representatives of the Income Maintenance for the Handicapped Co-Ordinating Group; Richard Santos, who is a member of the group, and Harry Beatty, who is the legal counsel. I want to welcome you both here today and also will state at the outset that while we are running behind time throughout our hearings--we have inevitably at some point been behind time--we have lots of time and will certainly ensure that we hear your comments fully. I know we will have a number of questions following the presentation of your brief, so I want to say welcome again and please proceed with your submission.

#### INCOME MAINTENANCE FOR THE HANDICAPPED CO-ORDINATING GROUP

Mr. Santos: We appreciate the opportunity to appear before you. I represent BOOST, Blind Organization of Ontario with Self-Help Tactics, on the co-ordinating group. Mr. Beatty is our legal counsel from Advocacy Resource Centre for the Handicapped, or ARCH.

Our group, the Income Maintenance for the Handicapped Co-ordinating Group, has been in existence for approximately 10 years. In my personal opinion, it is one of the best and most worthwhile efforts that is made within

the disabled community. It brings together representatives of organizations for disabled people as well as organizations of disabled people, and it brings together a wide variety of expertise. We have used this expertise and this broad-based group to examine issues and to bring forth to governments, both federal and provincial, various recommendations and also various issues which we feel have to be looked at for the betterment of a disabled person's life.

Based on this, even though this is a monumental task--and I have to say I am very proud of our brief, and Mr. Beatty should be given a lot of credit for that; I think it is a very well thought out brief--it is basically looking at the income maintenance field as the constitutional amendments of 1987 might impact on this area.

As all of you know, this is a tremendous area and very difficult to deal with. You have had experts who disagree. You have had experts who say "No," "Yes" and whatever. That is not what we are here for, frankly. What we want to do is point out some concerns and have them considered by you.

The first concern I would raise is that since both the Prime Minister of Canada and the Premier of Ontario have said that the amendments should go forward without change, even though we are having this opportunity to appear before you and to present our concerns, we have an initial concern about what is going to happen if this is not changed at all, if it cannot be made better. I think there is some general agreement that it could be made better. There is certainly not agreement that it should be changed, and this is the major problem.

One of the other major issues we want to point out--and you have heard it before, but we add our voice--is around individual equality rights and the equality rights of people. What happens? Two groups are mentioned within the constitutional amendment of 1987. What is going to be the interpretation? Mr. Beatty is a lawyer. Fortunately or unfortunately, I am not; so I will not venture an opinion. My only statement will be: For every lawyer, you will have a different opinion and interpretation. That is a real problem. If you mention some groups and not all, that leads to the question: Why not? If it was done deliberately in this way, I again ask, "Why?" The governments should come forward with their explanation.

I will turn to one of the real areas that we are concerned about. As all of you probably know, when you talk about income security for disabled persons, you are looking at three or four levels. You are looking at the federal government. You are looking at the provincial government. In Ontario, you are looking at municipalities. Also, you are looking at cost-shared agreements between federal and provincial governments.

One of the issues we would like to call your attention to is, are the constitutional amendments of 1987 weakening the federal participation? It can be argued that it should be, and it could be argued that it should be strengthened. However, we are not sure what is going to happen. We feel that it potentially could weaken the federal participation within the income security area. I will not get into whether income security is adequate, because that is another whole discussion. However, I just want to point out that the federal government does have, one way or the other, a piece of the action with unemployment insurance and with Canada assistance. I will not go through them. They are all in the brief.

The other issue is, what is the interpretation of what is provincial jurisdiction only? We focus on cost-sharing programs. Perhaps, since this is



one of our major pieces of concern, I will let Harry explain and go into this. You will find it around page 6 or 7, or somewhere like that, I think. Harry, would you like to do that? I think you will do a better job.

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Mr. Beatty: I think if you turn to about two thirds of the way down page 6 in our brief, it identifies the concern that the proposed section 106A of the Constitution or section 7 of the constitutional amendment fails to establish a clearly defined and accountable model for federal-provincial co-operation.

We do not necessarily say, by the way, that the system right now is working or that the constitutional issues are clear. On the contrary, we think there are problems, but we do not think the proposal addresses them. Primarily, it is just the interpretation questions or uncertainties created by the wording. I am sure you have heard this before, but there is the issue of what is reasonable compensation.

The federal document, Strengthening the Canadian Federation, seems to imply that a province which opts out, so to speak, or which establishes its own initiative, will get the money the federal government would have contributed to the shared-cost program. That, while it is general language in a document written for the general public, seems to indicate that reasonable compensation is really equal compensation. However, it leaves open the question of whether there can be a federal deduction or penalty where the nonparticipating province falls short of the national objectives in some way.

The notion of a shared-cost program itself is one we believe some uncertainty attaches to. Sometimes it is used in a restrictive way to mean a conditional grant program. Really, the Canada assistance plan is the only remaining example, or the Vocational Rehabilitation of Disabled Persons Act, which is much smaller.

But there is a question: Does it include block-funded programs? How about things like income tax provisions, which are really part and parcel of the income support system for people with disabilities? If you look at what a disabled person actually has available by way of support, you have to look at income tax as part of the picture and as one of the techniques used by the federal government but with provincial share.

There is also the phrase, "after the coming into force of this section." Many disability groups would like to see the Canada assistance plan amended and the Vocational Rehabilitation of Disabled Persons Act, as well. Some of the proposals that have been recommended in Ontario are in the appendix, which is the result of a consultation conducted by the Ministry of Community and Social Services.

When do amendments attract section 106A? Again, we believe that is an open question. It would seem maybe the right answer is it depends how substantial the amendments are. What is an initiative? When is a program a program and when is it an initiative? Then there is the question of compatibility and the question of national objectives.

It would seem that the intent of the section as a whole is to lessen the federal role and to lessen the federal authority. But exactly where the line is drawn as to what the federal government can and cannot do in consultation with the provinces, we believe is uncertain.



Our concern really is that, looking at the federal-provincial area since the great advances of the 1960s, the Canada pension plan and the Canada assistance plan, there have not been major reforms. We think some of these are overdue. For example, the Canada assistance plan, developed in the 1960s, seemed to be premised on there being a defined class of people who were poor because they were unable to work and who needed welfare services, to use the term under the Canada assistance plan.

Over the last couple of decades there has been increasing awareness of needs of, say, the working poor, which we also find in the disabled community. Disabled people who may have drug costs or whatever, as has often been pointed out, have many disincentives to work. If they are working, they often have almost fewer supports than if they were on social assistance.

These things need to be reformed. We do not see the reforms happening. We do not see a public process and we do not see section 106A as combined with the development of a model of federal-provincial co-operation. What we see is very general language and we would express great concern if these become viewed as matters for the courts, because if initiatives in this area are going to be litigated or if there is the threat of litigation, at least there is a delay.

There is the possibility that governments at both levels may back away altogether. And if, in the last analysis, these questions are dealt with by the courts, looking at those interpretation questions I think could fairly raise the question whether an appellate court is the forum where these issues should appropriately be addressed. Is a court really the forum in which there should be decisions on what may or will be essentially new questions of public social policy?

I think this summarizes our concerns in this area. We have had an opportunity to meet with the Social Planning Council of Metropolitan Toronto and review its brief and we note that it brought forward the idea of an interpretative document. I think we would have some support for that, given the reality that there is a commitment from both the federal government and this provincial government not to amend. That does seem to be an alternative.

I think there would be perhaps more willingness to consider section 106A if we saw progress in defining the rules as to how the federal and provincial governments would work together. But, unfortunately, it almost seems as if it is the other way, as if the section represents a sort of verbal agreement, but at the cost of using vague language that is not understood or may not be understood in the same way by the governments at different levels, which may create more problems than it has solved.

Dick, do you have things on your mind?

Mr. Santos: Yes, I was just going to use one example to illustrate how it potentially could affect disabled persons. Some of us met with the Minister of Community and Social Services (Mr. Sweeney) yesterday. The Vocational Rehabilitation of Disabled Persons Act has been worked on and there have been new negotiations and the federal government and the provinces have agreed to an extension for two years, with some changes. That is going to go into effect quite quickly. More negotiations and, hopefully, major changes will come about within the two years.

That particular act has a lot to do with employment and with the supports, etc., that disabled persons who are trying to become full members of

society can draw on. That is one very concrete example of what do these terms mean. How will it affect the new agreement?

I would just like to add that our group is supportive of having Quebec come under the Constitution. We know there are all kinds of issues and questions that you have been hearing, but we hope you can take into consideration our concerns around income security and around the safety nets and pieces of support that have been put into place for disabled persons.

We are certainly open to questions.

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Mr. Chairman: Thank you very much. We really do appreciate the submission you have made this morning, along with the various attachments. I think one of the questions, and it is critically important to the work of this committee, is particularly in those areas where there are individual groups that are receiving support through various programs that are federal-provincial in nature. I think it is critical that you make sure that whatever changes may be proposed at any given time are not going to have an adverse effect on the kinds of developments you want to see as we proceed over the next number of years.

While it is true that some of the specific questions you raise have been raised by other organizations in the area, they bear repetition, because we do want to make sure that any new arrangement is not going to block developments that we are already looking at as being positive and forward-looking.

Miss Roberts: Thank you very much, gentlemen, for your presentation. It is very helpful and very interesting to hear from people who had to struggle with this income support program for many years and with the differences between the funding of the various programs.

I was interested in your comment when you indicated that the system as it is now set up is not very helpful at all, and you have been struggling with it. Am I right in reading into what you have said that you feel the Meech Lake accord will crystallize a way of dealing with a system that we are not sure of? We do not know exactly what "national objectives" means. It is not that you do not agree with it; it is just that there is so much ambiguity around that you are not sure it is going to be helpful. Is that correct?

Mr. Santos: I will give a more gut-level reaction and let Harry give the more legal reaction. My gut-level reaction is that we do not have a perfect system now. The Meech Lake accord might give a chance for coming up with a better system, but I feel there is definitely no guarantee that it is going to be better, and it is probably going to be worse.

Mr. Beatty: I think one way of putting it is that we would know better what our position was exactly pro or con the provision if we understood what the effect was going to be. If the effect is going to be an effective veto by every province over any significant national initiative, clearly we have a lot of concerns. If it is going to be implemented through strengthening the federal-provincial process, one of the things we would support is making it more open and more accessible to the community. Then we might well be supportive. The concern right now is simply that it is not clear exactly what it accomplishes.

Miss Roberts: One more question: You indicate there is not a model



set out, and you have also indicated that you would support, I believe, the Canadian Council on Social Development with respect to having an interpretive document or something further done.

Do you want a model to be set up or do you want a series of models? You are dealing with one part of the opting-out programs or cost-shared programs. There are many other types of cost-shared programs as well. Do you think there should be a common model or should there be one for one area and one for another area? Do you have any beliefs or concerns about that?

Mr. Beatty: If I could start, I do not think income maintenance is necessarily the same as health and social services and education. As we have pointed out in the brief, the reality at the present time is that income maintenance is very largely in the federal area. If you look at the area globally, our figure of 85 per cent is taken from an article by Keith Banting, who has written the only text that I know of specifically on federalism and the welfare state. In other areas, we have a different model with health care and I do not think the issues or problems are necessarily the same.

Mr. Allen: I am delighted to have a careful brief from the Income Maintenance for the Handicapped Co-ordinating Group because I have found its presentations in the past helpful on other subjects. I find it similarly here. I think, first of all, it would be very difficult for any of us to support the Meech Lake accord if we thought it was in fact going to impact adversely, to put the most neutral sort of comment on it, upon income maintenance programs, not only for the handicapped, but also of course for other groups in the community: seniors and what have you.

I think that is something one has to take very much to heart, simply because the margins are so small. The income levels are less than adequate as they stand. Consequently, anything that makes anything in the remotest fashion more difficult for the handicapped community is obviously something we would find very difficult to tolerate.

As you know, sorting out the question around spending power and shared-cost programs is fraught with all kinds of difficulties and unclarity. I am not entirely convinced in my own mind that it is possible to say everything which has to be said about all that in a Constitution. I guess it is something like legislation and regulations. You need a legislative base, but you also then have to say an awful lot more about what you mean when you come around to the actual applications and regulations.

It is quite clear that we are going to have to say in the course of the foreseeable future, regardless of what happens to Meech Lake, just exactly what was meant by it. The courts will do some of that. Governments will have to do more of it, in terms of specific legislation that may flow out of it, the shared-cost programs and what have you.

I find it very frustrating to have you before me and feel we should be responding in more specific and detailed ways to those concerns, yet not feel quite able to. I should share with you that we certainly have had some fairly strong testimony which tells us that, if anything, the right to federal spending power in exclusive jurisdictions is strengthened by Meech Lake and not lessened, by the simple fact it will be constitutionally entrenched.

It was a notable gain to have that said specifically with respect to jurisdictions which are exclusively provincial, where the provinces in the past would have had more strength in their comebacks in the courts to any



federal encroachment in those areas than they will have in the future. I like to think that at least this much is some gain.

I am certainly aware, as I guess you are, that, for example, the latest big social spending area--the shared-cost programming in and around day care--has unfortunately seen the federal government actually, in practice, probably reducing the amount that would be available through the Canada assistance plan by hiving off some of those resources into the new child care program. It has done that because, I think, it was afraid some provinces might, in their expanding programs, access federal funds too liberally. That is an analogous kind of situation to the concerns you have. I think we are aware of those problems.

There have been two respects in which the equality rights question has come up. One has been the way that you have raised it, and that is in section 16--implications, the exclusion argument--and the other is the potential for the diversion of resources in Quebec. For example, under the "distinct society" clause, the resources that might otherwise go to groups, whether women's groups or disabled groups, because of the efforts to create a distinctive society in Quebec or to protect the distinctive society that is there, might impact adversely upon some marginal groups, in particular, and vulnerable groups in the community.

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I do not want to tempt you into commenting upon another province's social programs and income maintenance programs when our own leaves something to be desired, but just from the point of view of the force of Quebec being back at the table as a result of Meech Lake, do you have any impression for us whether Quebec has in general a more generous attitude towards income maintenance programs, in particular for the handicapped, than is the case in most other provinces?

Mr. Santos: I have been involved on the national scene a fair bit with various disabled groups and I have been at conferences where representatives of Quebec have been in attendance also. I certainly hear a mixed bag from the handicapped community of Quebec. I think it is a very difficult situation. Many groups in Quebec do receive quite a bit of support from the government. However, other groups, or even some of those groups, say that the basic services--I cannot speak so directly about income maintenance, but I have heard a fair bit of negative comment about the housing policies as far as disabled people are concerned.

I think that is a real minefield. You would really have to have some people who have done research, have various people speak to you. One of the feelings I have always had is that the official line in Quebec is much better than what the community thinks it is; that I will give you as a general impression.

Mr. Beatty: I could maybe add that regardless of how you compare the apples and oranges of the Quebec programs and those of Ontario or other provinces, it would be a fairly remote argument to justify inequalities, or that Quebec would even seek to do so on the basis that it is a distinct society. I know there are a variety of opinions on the effect of section 16. Notice that Professor Hogg, for example, effectively says that section 16 is just an interpretative provision, cannot affect the charter and is, as he calls it, a "cautionary provision" and the agreement would have meant the same without it.

Based on what knowledge I have of constitutional law, I think there is a lot of merit in that. You could almost say it is symbolic. If that is the case, I have trouble seeing the argument against including the individual equality rights along with the multicultural and native rights in the section.

I think it is unlikely that it makes a major substantive difference, although you can never always predict which case will come before a court. But given that it is unlikely and given the symbolic importance of that section to the communities which fought for it--I mean section 15--I think the gesture of putting section 15 equality rights into the interpretative provision makes a lot of sense. Like many organizations, we feel considerable frustration that it cannot even be discussed.

Mr. Allen: I was coming to the section 16 question and I appreciate the caution of your language, because it is the kind of caution we have in being quite certain about the implications of that. Many of us have an impression, I think, as these hearings are drawing towards a close, that it might have been better if the first ministers had never bothered with section 16 as a political gesture. It muddies the waters considerably.

At the same time, do you yourself, as a practising lawyer, see sections 25 and 27 that are included in section 16 as having any different character essentially to them from section 15? You probably are aware of the argument we have been given that section 15 is a very solid, substantive clause that would be virtually impossible to strengthen, whereas sections 25 and 27 are mere interpretative clauses and are just simply being reiterated in that fashion in section 16. I think the same argument was essentially given to us with regard to section 28 on male and female equality rights. Do you, in your practised legal sense, see that difference between those being included and omitted, those clauses of concern?

Mr. Beatty: The simplest way I could answer would be to say I can see both sides of the argument. If you explain, if you like, section 16 by saying that sections 25 and 27, and the other sections referred to, are in some way different, it is possible there may be a line of interpretation that would be developed by the courts that would support that. At the same time, on the most straightforward reading of section 16, saying that certain rights are unaffected seems to be saying that the other charter rights, by implication, can or may be affected.

I understand that line of argument. It is in an esoteric area and what we are really dealing with, I think, is how Canadians will understand those provisions in the package taken as a whole.

Mr. Chairman: I wonder if one of the elements of this whole discussion of section 106A in some respects relates to whether the federal government is losing power or the provinces are gaining power. I suppose one of the things that has been mentioned is that 106A will, for the first time, give the federal government, constitutionally, the right to move into areas of exclusive provincial jurisdiction, and I guess the balancing aspect is that a province, under certain conditions, may opt out and receive some form of compensation.

I suppose there is as well a certain political dynamic that goes on with or without Meech Lake. A lot of the concerns you have raised here today are still on the table in terms of the whole thrust of federal-provincial negotiations around shared-cost programs, income support, income maintenance and so on, because I guess some 14 or 15 years ago we went through several



years of very intense debate, trying to see if we could come up with that one program, so that somehow all forms of income maintenance and support could be developed.

We then get to the point which the Social Planning Council of Metropolitan Toronto has addressed to a certain extent. I am not sure if you have seen it, but I just mention it to you to look at. The Canadian Council on Social Development appeared before us last week in Ottawa and raised some interesting approaches to the definition of national objectives. We have not had the chance to go through it in detail, but none the less, I was thinking about, and you reminded me in your presentation about the Social Planning Council of Metropolitan Toronto. Looking at that, there may in fact be ways of dealing with Meech Lake in bringing forward some fairly specific proposals around how federal-provincial programs in the future should be directed.

With that as a long preamble, in terms of the sort of issues you see on the table today, apart from Meech Lake, would you like to see and would you be advocating a clearer definition of national objectives, national standards, in elaborating various shared-cost programs, whether we go back and alter the Canada assistance plan or in new programs we come up with? Is that a factor that would be recognized by your counterparts in other provinces as something we really have to deal with, whether in the context of Meech Lake or not?

Mr. Santos: If I am not mistaken, I think the position of the national group, COPOH, coalition of organizations, no, Coalition of Provincial Organizations of the Handicapped--I always have to unscramble the acronym--is around seeing national standards. I do not think our group has a particular position, but I would say from my standpoint, just being active within various groups and speaking from a community standpoint, I certainly think it has some validity.

I know somebody mentioned earlier movement around the country. That is even happening with disabled persons. With disabled people attempting to become full participants within society, within the country in jobs, education, living accommodations, etc., these are all reasons for people to try to move. If somebody can count on a certain basis in moving from one place to another, I think it would be a more positive step for a disabled person to become a member of society.

Mr. Beatty: Could I add two points, I think, as well. One is that in supporting national standards or clearly defined national objectives, I do not think we are necessarily saying that is something the federal government would do unilaterally without consultation. There is a big difference between the federal government proceeding when none of the provinces agree and proceeding when nine of the provinces agree.

There is also the argument, which I do not really think we are in a position to document but that people like Professor Banting refer to, that in the federal system, if there is a lot of provincial autonomy in this area, it does exert some downward pressure on social programs. From an economic viewpoint, if Ontario wants to increase the supports made available, and there is another province--for the sake of argument call it British Columbia--which does not want to make those improvements, over time there is some economic pressure on Ontario. Whether that can be documented by economists and so on, I do not know. It is a generalization Professor Banting offers.

Mr. Chairman: Could I just ask you one factual point. You have mentioned his book a couple of times, Federalism and the Welfare State. I take



it that it is federalism in the Canadian context, or is he addressing a number of countries?

Mr. Beatty: He is specifically addressing Canada, but with comparative studies as background.

Mr. Chairman: And that is the proper title?

Mr. Beatty: The actual title is The Welfare State and Canadian Federalism.

Mr. Chairman: And the publisher? We might just as well put that on the record; it sounds like there might be some interesting--

Mr. Beatty: It is McGill-Queen's University Press, 1982. There is also a somewhat more recent article by Professor Banting in the Ontario Economic Council two-volume set called Ottawa and the Provinces: The Distribution of Money and Power. He has an article in volume 1 entitled Federalism and Income Security: Themes and Variations.

Mr. Chairman: Thanks very much. While we have a lot to read, there are times when one still wants to look at certain other documents.

Gentlemen, on behalf of the committee, I thank you very much for joining us this morning, for your brief, for the attachments and for your observations and reflections upon our questions. As we have noted, we have had a number of submissions from a number of organizations involved with the handicapped, and I think there is a particular point of view and a concern that has been expressed there that is being clearly made out to the committee.

The committee recessed at 12:25 p.m.

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SELECT COMMITTEE ON CONSTITUTIONAL REFORM

1987 CONSTITUTIONAL ACCORD

TUESDAY, MARCH 29, 1988

Afternoon Sitting

Draft Transcript

SELECT COMMITTEE ON CONSTITUTIONAL REFORM

CHAIRMAN: Beer, Charles (York North L)  
VICE-CHAIRMAN: Roberts, Marietta L. D. (Elgin L)  
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Matrundola, Gino (Willowdale L) for Mrs. Fawcett  
Miller, Gordon I. (Norfolk L) for Miss Roberts

Clerk: Deller, Deborah

Staff:

Bedford, David, Research Officer, Legislative Research Service

Witnesses:

From the University Women's Club of North York:  
MacLeod, Jean  
Carr, Betsy

From the University Women's Club of York County:  
Towns, Maureen L., President  
Vendrig, Marjorie

Individual Presentations:

Courchene, Dr. Thomas J., Roberts Professor of Canadian Studies, Roberts  
Centre for Canadian Studies, York University

Leslie, Dr. Peter M., Director, Institute of Intergovernmental Relations,  
Queen's University



LEGISLATIVE ASSEMBLY OF ONTARIO

SELECT COMMITTEE ON CONSTITUTIONAL REFORM

Tuesday, March 29, 1988

The committee resumed at 2:05 p.m. in room 151.

1987 CONSTITUTIONAL ACCORD  
(continued)

Mr. Chairman: We can begin this afternoon's session. I would like to invite Jean MacLeod and Betsy Carr of the women's issues study group from the University Women's Club of North York. Please be good enough to come forward.

I want to welcome you both here this afternoon. We have a copy of your brief. I am also glad to note for the record that you have moved us another step in resolving parking problems around Queen's Park, for which many people yet to appear before other committees will, I am sure, be very grateful. I will simply turn the microphone over to you so that you can make your presentation and we will follow it up with questions.

UNIVERSITY WOMEN'S CLUB OF NORTH YORK

Mrs. MacLeod: I would like to begin by introducing ourselves. We are from the University Women's Club of North York. I am Jean MacLeod, leader of the women's issues group which has prepared our brief, and I live in the riding of York Mills, represented here at Queen's Park by Brad Nixon. This is Betsy Carr, who is active in the Voice of Women and the National Action Committee on the Status of Women, as well as in the Canadian Federation of University Women. Betsy lives in the riding of Don Mills, represented by Murad Velshi. Both of us are past presidents of the North York club.

We are here today because we believe that the Constitution amendment of 1987 requires changes before endorsement and we thank you for the opportunity to outline our concerns and recommendations. However, we wonder why you are here. The Globe and Mail, on January 26, 1988, reported that the Premier (Mr. Peterson) has said the government of Ontario will ratify the accord without alteration, but none the less, here you are, a select committee on constitutional reform. Are you to be a conductor of our concerns to the cabinet and Legislature or just a safety valve to permit a little steam to be released harmlessly into the atmosphere? The former, we hope.

The University Women's Club of North York is an organization of 400 university graduates and is affiliated with the Canadian Federation of University Women. For 37 years, the club has demonstrated its commitment to the higher education of women and to involvement in public affairs. Areas of our concern include education at all levels, conservation of resources and the environment, rights of native peoples, economic, political and legal equality of women, world peace, official languages bilingualism, Canadian unity and the future of Canada.

We registered our concerns when the Constitution Act 1982 was being written and we are concerned now and are grateful for the opportunity to discuss with the committee our reservations relating to the proposed Constitution amendment.

We are happy to welcome Quebec as it joins the other provinces, but we fear that rights now guaranteed in the Constitution are in jeopardy. For that reason, we wish to address the following four concerns which we believe have particular relevance for Canadian women: (1) the democratic process, (2) equality rights of women, (3) equal access to national social programs, and (4) executive federalism.

The democratic process: Canadians are accustomed to the democratic process and will not tolerate avoidance of that process in full or in part. We care about our governments' policies and decisions. We want to be well-informed about important public issues and to know that our concerns will be heard.

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How does the Meech Lake accord meet these requirements? When the constitutional accord was announced in June 1987 following a two-day meeting of the 11 first ministers, Prime Minister Mulroney assured us that the democratic process would be respected and that Canadians would be consulted before the accord was ratified. However, we soon learned that the agreement required acceptance without change by the 11 legislatures.

We know the accord has serious flaws. However, we have been told by our parliamentary leaders that the accord is so fragile that changes would cause it to fall apart. Moreover, the amending formula agreed upon gives the provinces such extensive veto power that change after ratification would be virtually impossible. Is it surprising that so many Canadians are unwilling to tie themselves in perpetuity to an imperfect agreement?

The Constitution amendment requires change before ratification and we ask the government to listen to the concerns and recommendations of the citizens of Ontario.

Mrs. Carr: Individual and equality rights: The Meech Lake accord has made the status of equality rights of women uncertain. In the fall of 1981, the women of Canada were aroused by the omission of a clear statement of their equality rights in the proposed Canadian Constitution and Charter of Rights and Freedoms. The government of Canada listened to the demands and, in 1982, equality was guaranteed in sections 15 and 28 of the charter. We have now been presented with an accord that, through the combined impact of two provisions, places these hard-won rights at risk.

The amendment to section 2 of the British North America Act recognizes that Quebec is a distinct society and the role of the Legislature and government of Quebec to preserve and promote that society. Clause 16 of the accord states that native and multicultural rights will not be affected by the "distinct society" clause. By accident or by design, women's rights were not listed and 51 per cent of Canadians have been denied a continuing guarantee of gender equality.

What is going to happen to legislation that has not been amended to comply with the charter? Does the constitutional accord pose a potential threat to the worthwhile studies and activities relating to women's issues which are supported by the women's programs division of the Department of the Secretary of State?

The right of women to equality is clearly stated in the charter: the Constitution amendment must be altered to ensure that this right is not called into question.

I would just like to add here that in the number of presentations to this committee which I have either been present for or have read, I notice it is only women who bring up the threat to the rights of women. I think all we women have to do it or you are not going to hear it.

**Equality of services:** A fundamental characteristic of Canadian society is a range of social programs and services financed by federal-provincial cost-shared agreements. Canadians from coast to coast to coast benefit from medicare, Canada assistance, education and skills training, language training, administration of justice and many more programs made possible by money transferred from the federal government to the provinces.

Canadians have a right to equality of access, but section 106A will permit provinces to opt out of national cost-shared programs in areas of exclusive provincial jurisdiction. This section provides reasonable compensation for programs that are in accord with the national objectives.

How can national equality of access to services be maintained? Will we ever see a new cost-shared program implemented? Will there be no hope for the development of a national child care program or a mechanism by which maintenance orders can be enforced across the country? Who is to decide national objectives? Will potentially unequal access to social services make Canadians more or less united?

We ask that section 106A be deleted before it is enshrined in the Constitution and becomes practically unassailable.

**Executive federalism:** The importance that women assign to availability of services and the opportunity to contribute to their substance and design leads to our final concern. The incorporation of two annual first ministers' conferences in the Constitution would institutionalize a third level of decision-making in Canada, in competition perhaps with the federal and provincial legislatures.

This third level would, at least potentially, place a further obstacle in the path of women's groups and other volunteers who wish to participate in planning and developing the laws, programs and services that will directly affect their lives. Approaching a member of Parliament or a member of a provincial Legislature is less difficult than approaching a first minister or having to go to every province. We believe these two annual conferences should not be incorporated in the Constitution.

In conclusion, we are really asking that the amendment be altered in the areas we have discussed in order to alleviate the concern we share with hundreds of thousands of women across Canada. I would like to add that interested citizens are now asking who speaks for Canada and the Constitution amendment 1987 leads not to unity but to decentralization and disharmony and puts in question our future ability to function as a political entity. It fosters rival political interests, encourages north-south links, as does the proposed Canada-United States trade deal, and weakens the national policy potential of the country.

The Prime Minister should do more than preside over the dispersal of federal powers like an auctioneer breaking up an estate, leaving the central government mainly a tax collection and distribution role. Canada needs a strong national presence; for example, environmental protection standards, as explained in the Brundtland report for the United Nations, meaningful child care policy and national education and training strategy, with two levels involved but with federal leadership.



Our politicians are blinkered by political expediency. They cannot rise above regional and partisan interests. Who speaks for Canada's future as an independent, democratic nation?

Mr. Chairman: Fine. Thank you very much for the presentation and also for the very specific recommendations. I think, as we are in our sixth week of hearings, we are not only grappling with issues but by this point have also heard a number of them developed and are trying to grapple with various ways one might be able to deal with some of the problems. So the specific recommendations are helpful in that regard as well. We will begin our questioning with Mr. Allen.

Mr. Allen: I am delighted that the University Women's Club of North York has bent its mind to this national problem and joined the many people who have come before us to make a presentation and offer criticisms. I only regret that the assembly they see before them has apparently lost the two constant female members who are normally part of our committee. There should be more, obviously, but we have lost even those for this afternoon's hearing.

Could I ask you, first of all, to be more precise about your recommendation under "Individual and Equality Rights"? You say this amendment should be altered to ensure that right is not called into question. Do you have a suggestion as to what alteration you would like to see in the accord which would ensure for you that those rights were not called into question?

Mrs. MacLeod: One of the simplest things would be to add it to the list that already has Indians and multicultural interests. In the original Charter of Rights, those rights of particular groups are grouped more or less together, are they not? One solution would be to simply add it to the rest. Mrs. Carr, do you want to add to that?

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Mrs. Carr: I believe we would also suggest that the primacy of the rights explained in the Charter of Rights and Freedoms would be maintained and would be specified. I think it is by omission that women's rights are threatened in the amendment. As Jean has just mentioned, multicultural rights and native rights are specified as not being affected by the "distinct society" clause and now we are in a position where women's rights, just by omission, could be interpreted by the Supreme Court of Canada as not having the same status as the others.

Mr. Allen: Your language is fairly cautious: "could be interpreted."

Mrs. Carr: It could be interpreted. Women's experience with their equality over the years has not been a good one in Canada. We were not persons until 1929, and you know all these things, so we are pretty leery of a place where there could be some misinterpretation.

Mr. Allen: And properly so. Could I ask you to respond to the one train of argument that has been given to us to explain what happened--apart from the oversight argument--that on the one hand, sections 25 and 27 that deal with aboriginal and multicultural rights were inserted to protect those rights over against the "distinct society" clause because those were two cultural entities in our national fabric, much as the society of Quebec with its French language, civil law and so on is another sort of cultural entity in the nation?

Therefore, it was with respect to the balance among these three cultural entities that those other two were finally agreed upon as worthy of insertion, whereas the question of women and the question of other equality rights were not considered to be specifically cultural questions in the same sense.

Second, sections 25 and 27 on aboriginal and multicultural rights were framed as interpretative clauses, whereas section 15 dealing with equality rights, which would be one that you would be especially interested in, and section 28 were very strongly worded statements of rights in and of themselves, and since the charter would always, in every court case where anything was in balance affecting those items, be present in the minds of the judges, it would not be necessary to duplicate those clauses in the Meech Lake accord.

That is an argument that has been presented to us and I wonder if you have had a chance to reflect on that, and in any case whether you had it presented to you and what you think about it.

Mrs. Carr: The "distinct society" clause has not been defined. We know that Quebec is given special mention in the amendment to preserve and promote that society and we are afraid that women's rights will come up against that and that there could be some change or some alteration in the immigration, for instance, of women to Canada. There is certainly a possibility for that to happen because that has happened in the past, too, where only males of a particular group were allowed to come.

We are not expecting that same thing again, but we also do not know what kind of government every province is going to have from here on. There could easily be a provincial government that wishes to do that, particularly in Quebec with that open-ended, undefined "distinct society" clause and its mandate to promote that. There are just too many questions in there. We just do not know whether women's rights would stand up.

Mr. Allen: Does it relieve your mind at all that Quebec has had probably the best record of any of the provinces in recent history with respect to women's rights and that it has a charter of rights and liberties itself which is probably stronger than even the charter or any of the other provincial human rights codes?

Mrs. Carr: Sure. I think that is so. I also believe that the Constitution of our country should specify these things and not leave it to the provinces to specify their own human rights standards or anything. It is all very well for them to do it, but we must have an overall one for the whole country that applies to all women, not just the women in Quebec.

I think the women in Quebec have had a very good deal for some time, even when there was a separatist government there. I know that puts them in a rather invidious position now and I can appreciate that, but no provincial government is there permanently. The Constitution of our country is, and that is where it should be spelled out without any possible doubt.

Mr. Allen: Finally, am I correct in hearing you saying that, in your opinion, as things stand, the charter itself does not firmly enough entrench women's rights in either section 28 or under the general equality rights section, 15, so that they would prevail in any contest in the courts?

Mrs. Carr: I think it was probably quite well done before, in 1982. However, there has not been a lot of case law since then. There have been a few cases, but not enough for us to really feel secure in that.

Now the doubt has been thrown in before some of the case law has been established. I think there is a chance there for women to come out on the short end of it, one way or another, and I think in the Constitution the charter should be pre-eminent, should have primacy. I think now is the time to make sure that is there, because once the veto powers of the provinces are established, it is going to be very difficult.

The example we have right now of what happened when the 11 first ministers got together and produced this and said "no changes" is not a very good omen for what could happen in the future when they have to have unanimity. The only thing they seem to be unanimous about is saying no.

Mr. Allen: I think you echo a concern we all have. Thank you very much.

Mrs. MacLeod: Could I say something, just at the end? We were part of the upsurge of women in 1981 when it appeared the charter was not going to include equality rights for women and they were put in. In the old days, diamonds were a girl's best friend; nowadays, equality rights enshrined are.

Mr. Breagh: Tough crowd.

Mrs. MacLeod: We want them absolutely protected.

Mr. Offer: Thank you very much for your presentation. I would like to ask a question with respect to the process. You have alluded to that on the first page of your presentation with respect to concerns about the type of process that has taken place in the past. I am trying to ask you to expand upon that because, as you most likely know, we have heard from a number of people who have said basically the same thing, that the process with respect to public participation and input needs a better type of framework. We need to have a better framework for public participation. What went on in the past is not sufficient to carry on with the needs of the future as people become more acquainted with how the charter, how the Constitution will impact on their very lives.

You have on your first page spoken about the process, in terms of there needing to be a process maybe. I wonder if you can expand upon the type of process you envisage in which the public would have a real part in discussing this particular change in constitutional reform.

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Mrs. MacLeod: I think for such an important issue as constitutional change that what came out of Meech Lake could have better been considered a position paper, not an accord that Canadians were to take as is and the governments were all going to agree to it without change. For such an important paper, the mechanism should have been set up, by the way, for hearings such as we are having now, but also with the promise that changes would result in response to the concerns expressed by the people. We have come but we really do not know what outcome our efforts will have, and I am sure there are hundreds of others like us.

We have seen it happen many times. As women, we have been involved in a great deal of discussion and study when the law reform was concerned with family law, this kind of thing. We know what it is like; we have been involved in it in the past and we certainly were involved in it before 1982.

Mrs. Carr: To add one small thing, we know that it took 50 years to



get to the Constitution that was passed in 1982. I do not know really why even at that point there had to be an overnight session that did the finalizing. This time it was even worse because there were no changes offered at all. As far as process is concerned, I do not think that is good enough, just presenting a fait accompli, as it were.

Mr. Offer: In terms of it not being good enough, certainly I take that from your position very clearly and I take that as being a very clear position of an awful lot of groups that have come before us. It matters not whether they are in favour of constitutional reform. In many ways they say: "Constitutional reform is one thing, but the constitutional reform process is another. We now have this accord which does constitutionalize first ministers' conferences where there will be constitutional hearings on an annual basis." People are saying, because of that and because of interests such as yours that might be impacted, they want to have meaningful input into the change.

The point I am trying to come back to is that I sensed from your first response that if the accord were a position paper as opposed to something that had been signed and there were public hearings taking place and then a report back, that would, in your opinion, be sufficient to come to grips with your concerns with the process.

Mrs. Carr: I do not think we need a constitutional conference of first ministers annually. I just do not think we need that. I think we did need an ongoing series of first ministers' conferences before the 1982 Constitution, and that was very valuable. We know that there were vetoes offered in those days which put everybody back to the bargaining table or the drawing board, as it were.

But it seems to me that we do not have to do it every year. I do not know what the use is of doing it every year if there is veto anyway. I think that is just an exercise in futility. We should have been having a series of conferences where there was open debate, this kind of hearing, public meetings, various things being presented, and I think it would have simmered down, because I do believe that some of the things we are talking about here were simply overlooked. I do not think they were done deliberately.

There certainly was not any advice from any women's groups when it was being done, and a lot of the flak you are getting now is from women's groups in these particular areas.

Mr. Offer: Not only from women's groups.

Mrs. Carr: Well, a lot of it.

Mr. Offer: Thank you very much for your concerns about the defective process, because it is something this committee has said in the past and continues to say. It is something we are going to have to grapple with in our report. Thank you very much for sharing your thoughts on that.

Mr. Chairman: Before going on to the next question, I would just like to make one point in defence of some of our members who are not here today, just so you will understand that it was not because you were coming. As was mentioned, both Marietta Roberts and Joan Fawcett are miles and miles away from here, and you will understand that, from time to time, members' lives become somewhat complicated. That is why they are not here. Mr. Harris and Mr. Eves, who are normally here, are involved in a House leaders' meeting and hope to get here as soon as they can. I just wanted to make clear that it was other duties that drew them away.

I would like to raise some questions around section 106A and the whole question of the federal spending power issue. The concerns you have expressed with respect to the charter, for example, are ones that really are of concern to everyone. They have to be, because one of the interesting things that developed following the acceptance of the 1982 constitutional changes has been the extent to which the charter has become part of a national consciousness. One of the things that has struck all of us on this committee is the testimony given by women's organizations, multicultural organizations and official-language minority organizations which really look to that charter as a very firm protection in a number of areas.

As you have noted, there are many cases still going through the courts with respect to determining just how significant some of those charter rights are, and I suppose in a few years' time, we may want to come back and look at some of the clauses in the charter, perhaps feeling that they are not strong enough and that what we thought was there has been interpreted as something less than that.

It is perhaps interesting to note that in bringing about changes to the charter, the existing clause for amendment would carry it. It does not require unanimity, but rather the 7-50 rule, which I think is a comforting thought. There are still many areas of the Constitution, in fact the vast majority, which would be changed not under unanimity but by the other route. Those charter rights are things I think we all feel and can relate to very clearly.

With respect to section 106A, it seems to me there is another argument one can make there, and a very plausible argument in terms of why that may be an important article to have. There are two things that clause does. It reflects a lot of federal and provincial discussion and problems over many years. That brings together discussions at least over the last 25 years, and I think one could probably go back to Confederation itself.

What it does is to enshrine in the Constitution for the first time the constitutional right of the federal government to enter into areas of exclusive provincial jurisdiction. That has never been there before. The balancing act, I suppose, is not the right to opt out, in that provinces can opt out of anything they want, but to opt out with reasonable compensation, and I appreciate there is not a definition of that.

When you look at the division of powers from 1867 and the way that has evolved, when you look at the way the political process has worked in this country and works today in the development of federal-provincial programs, I think the argument could be made that what this new section does is put firmly into place a couple of principles. But in terms of developing various national programs--let us take child care as an example--my strong sense would be that where a federal government saw that as a priority, I do not see that that article would stop the implementation of a national program.

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Even today, without anything in the Constitution, no major national shared-cost program can really be brought about unless there is a strong sense of political direction, sometimes coming from the provinces. After all, it was Saskatchewan that brought forward medicare. Again, it is not a question where one can with all these things say with 100 per cent certainty, but I just wonder if that article does not better reflect the way our federal-provincial system in areas of exclusive provincial jurisdiction has operated over the last number of years, certainly since the arrival of Prime Minister Trudeau.



It does not necessarily pose the threat to national programs or to a sense of the nation that you might think.

I would be interested in your reflections on that rather long comment. Perhaps I was so obscure by the end that it is impossible to answer.

Mr. Breaugh: Yes, I think so.

Mr. Chairman: Just wait until you ask a question, Breaugh.

Mrs. MacLeod: First I would like to say that, speaking from a women's group's point of view, so many of the programs that are involved are programs we are particularly concerned with: the health and the support of the poor and language training and education. All these things are concerns we have very close to us which affect our lives to a very great extent.

One thing is that we do not think it is right that in one province you would not have the same services that would be available in another province. I know this is a red herring to poke in, but look at British Columbia when the Premier was suggesting that some medical services would not be funded. That is just an indication of the kind of thing that can happen.

We think that, as Canadians, people should have access to these important services no matter where they live. Also, we feel that, as Canadians, it is important that it be known that these services are financed by all Canadians for all Canadians. While the money is collected and goes to the federal government, it is dispersed so that, no matter where you live, you will have a reasonable equality in the services you need.

Those are my two things: actually getting the service is one and a stronger feeling of Canadianism because of the co-operation that makes possible these services is the other.

Mr. Chairman: In the clause they refer to national objectives, and we have had some discussion around national standards as opposed to national objectives, what might be the difference and so on.

The Canadian Council on Social Development met with us last week and put forward four objectives. They tried to define what they felt would have to be objectives under a national, federal-provincial, shared-cost program. One would want to look at those definitions more carefully but, none the less, they suggested a way to meet a number of those concerns in the sense of how different a program could be in a province that might have opted out. I realize this is one of the areas of concern. I think people agree that if you have a child care program, you cannot use the money to build roads, but what would be some of the differences, limits and so on? I think that is a very valid point.

There may be ways of defining those parameters that would still permit that kind of balance or tension within the system in terms of the role of the federal government and the role of the province, but we are still talking about areas of exclusive provincial jurisdiction. That, of course, is not Meech Lake; it is not even 1982. It is 1867, plus the various interpretations of what some of those things have meant. We also then get into the problem of, in that area, who defines what the national objectives are and what the role is of the province and the federal government, for example, in defining Canadian educational standards and goals?



I am still wrestling with this, but I am not so sure that in that particular article or clause they may not have found a route that might help in the development of some of these programs. I certainly accept your concerns and I think those have to be addressed in dealing with that.

Having asked the last question, I will now thank you very much for joining us this afternoon and presenting your brief. With respect to the various recommendations you have made, as I mentioned before, we are getting closer to the end of our public hearings, which means we are getting closer to the very difficult questions of how to try to meet and address these concerns. We want to thank you very much for sharing your thoughts with us this afternoon.

Mrs. Carr: Thank you for allowing us to come.

Mr. Chairman: I will now call upon the representatives of the University Women's Club of York County: Maureen Towns, president, and Marjorie Vendrig, convener of the women's issues study group. Perhaps you would be good enough to join us.

I welcome you both here this afternoon. We have a copy of your submission. I will simply turn the microphone over to you. If you want to lead us through it, we will follow up with a period of questions afterwards.

#### UNIVERSITY WOMEN'S CLUB OF YORK COUNTY

Mrs. Towns: I would like to start by introducing ourselves. On my left is Marjorie Vendrig, who is the convener of our women's issues study group. My name is Maureen Towns. I am the president of the University Women's Club of York County.

Our university women's club is a sister club to the North York University Women's Club. Our club has a membership of 110 women who are university graduates. We are centred in Aurora, although we go from Richmond Hill to Bradford, and quite a distance both east and west along Yonge Street. We are in the riding of North York. Our chairman is in fact our MPP.

Mr. Breaugh: You have our sympathy there.

Mr. Chairman: You are not going to be able to talk about Oshawa here.

Mrs. Towns: The goals of our club and that of the Canadian Federation of University Women are to promote education and foster awareness of and involvement in public affairs. We are an affiliate club of the Canadian Federation of University Women, which has 12,600 members across the country in 126 clubs.

I would like to note that the brief we have submitted to this committee complies with the Canadian Federation of University Women position on Meech Lake. CFUW made a presentation to the Senate in January 1988 with respect to Meech Lake. This brief has been endorsed by our club. I would also like to note that it is in the process of being circulated to all the clubs in Ontario for their endorsement. At a later date, we can write to this committee to advise the results of that ratification.

I would also like to note that this brief really only deals with two issues. Certainly, there are many other issues with respect to Meech Lake that

are of concern to members of our club. We have restricted our comments essentially to two issues.

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I would also like to indicate that with us this afternoon are ??Susan Bright, who is the provincial director of Ontario Central which has approximately 3,000 members, Ontario Central being an area of the Ontario Council of the Canadian Federation of University Women, and ??Betty Tugman, who is the provincial vice-president of Ontario Council of CFUW, as well as the president of the Mississauga club.

We have provided a copy of our brief to the committee. It is not our intention to read from the brief this afternoon, although I will briefly indicate to you what we have said. Initially, we state, as I think everyone does who appears at these hearings, that we welcome the inclusion of Quebec in the Constitution of Canada. We go on to voice our concerns with respect to the opting-out provisions. In brief, we feel it is a dangerous provision and not thoroughly considered in the drafting.

We deal with gender equality. Section 16 of the Meech Lake accord does not deal with gender equality as contained in section 15 of the Canadian Charter of Rights and Freedoms. We feel we are precluded from the protection offered by section 16 and that gender equality rights are at risk as a result of this. This may well, as indicated by the previous speakers, be an oversight. If it is, we would like to see it fixed. If it is not an oversight, we demand an explanation as to why those rights were not included in section 16.

I would like to deal now in more detail with the federal spending powers. As certainly all the members of the committee are aware, the provinces may now opt out of national spending programs on showing adherence to a national standard. A national standard is not defined. Who is to define it? How is it to be defined? Neither is the phrase "compatible to a national standard" defined. What will that mean? None of the key phrases in this provision are defined, which leaves it open for them to be defined in any number of ways.

How will such an opting out process ensure equal treatment for all Canadians? All Canadians should have equal access to cost-shared programs. We believe that the opting-out provision will have special impact on women and on children, as women and children are the beneficiaries of many of what we might call social welfare programs. In our submission, the effect of this opting-out provision has not been fully considered.

We ask you to consider the recent national experience following the January decision of the Supreme Court of Canada on abortion. Of course, abortion is a whole separate issue, an extremely divisive and emotional issue across the country. None the less, we believe that it serves as an excellent example of the kind of problem that can occur.



Following the decision of the Supreme Court of Canada, each province has adopted its own policy with respect to the funding of abortion services. That ranges from Ontario, which I think it is fair to say in summary has now banned abortion committees, to British Columbia which attempted not to allow medicare to pay for abortions, to Saskatchewan which has decided that two doctors must be consulted in order for a woman to obtain an abortion.

This is not, under any realm of consideration, equality before the law. The games being played with respect to this issue are being played with health care dollars. The issue has come down to whether or not each province will allow its medical dollars to pay for abortions. We note who the victims of this game are. So far I have not seen any media reports of any man being denied an abortion when requested.

I would also like to note that at this point if the federal government had the will, it could enforce equal access to abortion funding across the country, as it was able to do with respect to extra billing, by making amendments to the national health care act; I apologize if I have the name wrong, but certainly there was an act that caused a great stir some short years ago with respect to funding.

In our submission, what has happened in the abortion debate provides an excellent example of what can happen in the opting-out provisions. We would also ask you to consider that I think it is fair to say that at this point we are in somewhat of a honeymoon period with respect to Meech Lake. As an example, I use the agreement of the provinces and the federal government to follow the Meech Lake guidelines in suggesting names for the Senate. Although the Meech Lake accord has not yet been ratified, 11 governments are trying to use those guidelines in order to appoint people to the Senate.

Here we are in what is supposed to be a honeymoon phase for Meech Lake and yet we have total disaster with respect to equal access across the country on this one issue. Again, I just use that as an example of the sort of thing we fear happening because of the opting-out provisions.

Next, I would like to deal with gender equality. As noted in our brief, we talk about gender equality but really we are talking about the equality of women. Section 16 of the Meech Lake accord makes some rights stronger than others. To list two rights and not others effectively excludes the rights not listed from the protection in the accord contained in section 16. It is a well-settled legal maxim that, without wording to the contrary, a list is considered to be exhaustive.

That some rights were forgotten seems so obvious that we have great difficulty understanding why this has not been corrected. There have been numerous assurances from various levels of government and legal experts that this will not be a problem. First, we feel such assurances are totally meaningless. Once this accord is ratified, any decision as to the meaning of that provision will be left up to the courts. Second, the suggestion has been made that any problems with respect to the accord can be rectified after Meech Lake is ratified. In our submission, this will be virtually impossible due to the unanimity provisions.

In any event, if it is seen to be a problem, why suggest amending it afterwards? Certainly, it makes more sense to amend it beforehand. At the very least, we would ask that a reference to the Supreme Court of Canada be made to



get its thinking, to get a decision from the Supreme Court of Canada on this issue as to what, precisely, the effect of section 16 of the accord is.

We would like to speak briefly about the process that has brought us to these hearings. I would like to indicate that I think it is important that we not get unduly side-tracked by the process and lose sight of the issues that are inherent in the accord, and the issues that concern people making presentations to this and other committees.

The accord was struck after 11 people were sitting around a table in some secrecy in Ottawa until three o'clock or five o'clock in the morning; I forget the exact time. In any event, according to the news reports, the sun was coming up. They had to stay until they were finished. The manner in which it was done brings more to mind labour negotiations than running a country.

The fact that all 11 people were men, in our submission means that the experiences they were bringing to the table were not necessarily experiences of the entire population. For example, if you were striking an agreement with respect to the environment or with respect to the use of natural resources, you would not necessarily expect fishers and farmers to bring to the table the concerns that foresters would have. It is simply a matter of the experiences of the persons sitting at the table.

Once the people in Ottawa reach an agreement, we are advised that the agreement is to be left as it was struck and that there are to be no amendments.

The government of Ontario has subsequently opted to hold hearings into the accord. Certainly, we welcome the opportunity to discuss our concerns. However, Premier Peterson insists the accord is to be ratified as it exists with no amendments. If that is the case, what is the purpose of these hearings? Is anyone really listening? If you are listening to us, will the Premier listen to you?

It is difficult to convey our frustration with this process. In our submission, Meech Lake has some grave flaws. To feel that these flaws are simply being ignored because in April 1987, 11 people decided that this was the way it was going to be and that the collective voice of various people across the country had absolutely no effect on that is extremely frustrating.

To suggest that changes will be made after ratification of Meech Lake is plainly ludicrous. First, changes will be very difficult because of the unanimity provisions. Second, if we need changes, why are they not made before ratification? Third, if changes are not to be made, why are we here at all? Finally, if changes are to be made after ratification, who will bargain for women after ratification? Clearly, we have not seen that before. Why should we expect it would be any different afterwards?

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As I have indicated in our submission, the Meech Lake accord is a fatally flawed agreement. We do not understand the insistence of the persons who struck the accord on ratifying it as it now stands. The suggestion that if the accord is not ratified there will be political instability nationally is frankly a suggestion I do not understand. In our view, this comment is politically irresponsible.

I think it is important to examine the question of the cost of achieving

the objectives Meech Lake is attempting to achieve. At what price are we willing to have constitutional unanimity across the country? In my view--I must indicate it is a view that is held by myself and is not part of the brief ratified by the club I represent--the price Meech Lake puts on that unanimity is too high on a number of fronts.

We also wonder what the rush is with respect to ratifying this document. Canadians have spent decades trying to work towards constitutional unanimity, trying to have the entire country under one Constitution. Why have we put the gun to our heads with this particular document?

We are asking, first, for an amendment in the area of the concerns we have expressed. Second, in the event no such amendment is forthcoming, we are asking at the very least that a reference be made to the Supreme Court of Canada to examine the question of gender equality rights.

I have spoken earlier of the frustration we feel with this process, and part of the frustration is the great fear that this document will pass as it exists, which we feel will work to undermine Canadian federal democracy as it now exists. We have used some strong words in our submission, but only because we feel very strongly that the Meech Lake accord will have an adverse effect on this country. I must leave you with this question: Why are the Prime Minister and the premiers, and through them their legislatures, willing to be marked down as the creators of this accord, which is an imperfect document?

Mr. Chairman: Thank you very much both for the written submission and for your further comments and views on some of these issues, as well as some others that were not dealt with. We will begin the questioning with Mr. Eves.

Mr. Eves: I want to thank you for your presentation and your brief. You have made points, as I am sure you are aware, that many other groups have made that have appeared before this committee.

I really want to get down to the question I have asked many delegations: What is your bottom line, so to speak? Personally, I wholeheartedly agree with your suggestion that section 16 should be amended and that the ambiguity in section 16 should be clarified, not just for women's equality rights but for the rights of everybody under the Charter of Rights and Freedoms. I could not agree more that if the clause means nothing, then why enunciate two rights in it?

We have heard from Morris Manning and other constitutional experts and lawyers. They differ, and there is no doubt about it, but Mr. Manning's point of view is that supreme courts have always taken the position that clauses in a Constitution do not mean nothing. The court will impute some intent that legislators put there, because obviously legislators would not be stupid enough to put words in that do not mean anything. Either section 16 should not be there at all or it does mean something. If it means something, perhaps it means others' rights are excluded. I could not agree more. Some groups that have appeared before us have suggested that perhaps, if section 16 said that everyone's rights under the Charter of Rights and Freedoms superceded the accord or were first and foremost, that would not only solve your particular problem but also everybody's problem in society.

I presume you would be happy with such a broad amendment to section 16. Failing that, as you say and I think quite rightly so and you are quite realistic in your submission, if nothing else, a reference to the Ontario



Court of Appeal should be made for court interpretation of section 16. If one of those two things were done, would you be happy then with the accord, or do you still want the other issues you have raised, specifically the issue of opting out, addressed as well before you would be happy with the Meech Lake accord?

Mrs. Towns: I think it is necessary that both issues be addressed because I think there are matters that are substantially different in both issues.

With respect to our bottom line concerning section 16, I would just like to note that at this point we diverge from what is endorsed by our club and we are getting more into Ms. Vendrig's and my reaction to your questions.

Initially it appears to me that if section 16 is an interpretative or guiding clause, it should be in the preamble; it does not belong in the body of the accord. As an alternative, certainly women's rights could be added, but as you know, many rights are left out. There is nothing with respect to rights concerning religion or age--there is a long list of things in section 15 of the charter that are not dealt with in section 16, and we have confined our comments simply to women's rights.

Thirdly, I believe the position that the rights contained in the charter supersede the accord is totally wrong. In saying that, I refer to the Supreme Court of Canada decision in June 1987, I believe it was, with respect to the Roman Catholic funding case. In that decision, Madam Justice Wilson made reference to the British North America Act of 1867 and said--I am paraphrasing--the charter could not supersede the fundamental compromises made in order to achieve Confederation. In my view, the charter does not supersede other aspects of our constitutional document. So legally, in my view, that submission is inaccurate.

The bottom line is that I think section 16 should be in the preamble; it does not belong in the body of the accord.

Mr. Breaugh: I would like to pursue a couple of things we have wrestled with. First of all, the fact that this committee is here means there will be a response to problems that many groups have pointed out. I do not think anybody is going to be happy with all of it, but it is our job to make political judgements about who is right and who is wrong and who has raised a valid concern and who has not been able to make a case. In the end, a lot of folks are not going to like that, but we are in the position where eminent constitutional experts, the best legal minds in the country, have been before the committee and given us many different opinions on matters. Someone has to make the judgement calls; that is not always a pleasant job, but that is where we are.

There are two things I wanted to pursue with you. One was, I am intrigued by the notion that I have gotten from a number of groups now that the Charter of Rights is gone, that it does not exist any more. That is not true. I am wondering just exactly how that impression became so widespread. My concern basically is that it is not clear to me what impact this accord has on the charter. I am trying to assess in my own mind what has happened there and how you might most efficiently determine what will go on there, but I do not dismiss for a moment what many people have said, that we will not know that for 50 years. We will probably get some version of this accord put in place. We will probably have more constitutional amendments over that time, but what constitutions are good for is, you put them in place and let them bubble along



for a lengthy period; then over half a century or so, you have something that is probably very clear to everybody. But they are still interpreting the American Constitution, so I imagine they will be interpreting the Canadian Constitution for some time as well.

I believe it is not inaccurate to say that a lot of people feel the Charter of Rights, which we just got in this country, has somehow disappeared; that impression appears to be very strong, particularly among women's groups. I would like to hear your comments.

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Mrs. Towns: I do not feel that the Charter of Rights is gone, by any stretch of the imagination, and I am not sure how groups arrive at that conclusion. What we do see is that section 16 lists particular protection for two groups of rights and not for others. I think what most groups are saying, although certainly I cannot speak on behalf of them, is that this may present a problem. I think the very fact that it may present a problem is where the concern for women's groups arises. Historically, "may present a problem" ends up presenting a problem. Certainly I think the fact that because of the wording of the British North America Act of 1867 women were not considered persons in Canada until 1929 at this juncture in our history seems ludicrous, but certainly that was the case in Canada for some years and that it may present a problem is of concern.

In terms of expecting our courts to always make reasoned decisions, I would just like to draw your attention to a decision of the Alberta Court of Appeal, I believe it was. It was a discrimination case with respect to a woman being fired because she was pregnant. The Alberta Court of Appeal said the woman was not discriminated against because she was a woman. The discrimination was against pregnant persons but all pregnant persons were treated equally. Now, if that is not discrimination against a woman, I do not know what is. In legal thought, that decision may well be sound legally, but rationally it does not make any sense at all; and that is the concern, because even if we would like to impute to our courts having the best legal minds and making reasoned decisions, none the less the decisions sometimes can be plainly ridiculous.

Mr. Breaugh: I feel a little better about that, because I want people to understand that there is a nuance at work here. There is the placing of words in a constitution, and we are all making our best possible judgement call as to how that might impact on another part of the Constitution.

Ms. Vendrig: I would just like to add that what we have is some incongruity in two very important documents. If Canadians look at these two documents and see only some discrepancies, how are they going to feel about what their national rights and the spirit of the law is? Nothing is clear there, even their own rights, for 51 per cent of the population. That is a very weak document to have as a national document.

Mr. Breaugh: Just to conclude this little part of the argument, there are many of us who are looking at the Charter of Rights in a different way than we did a couple of years ago. We are seeing different things in there. It is not that we are stupid or anything; it is just that other factors have come into play. Court decisions have entered into the picture. How people exercise their rights under the charter and the kinds of lawsuits that go before the courts change how I look at the Charter of Rights. There is a mix of things at work there. It is much more subtle than many people would paint it.

As a legislator, I would be the first one to tell you that you do not get any rights from words on a piece of paper. They only come after the fact when someone else goes to court, when some government takes some action, when you take some action. There is not quite as straight a line of relationship there as some would like.

Let me move to one other area that we have discussed a lot with a number of people, and that is the matter of standards or objectives or things that might be called programs of a national stature. I must confess I am trying to understand this argument, but I am having difficulty with it. Is there anybody in Ontario who honestly believes that the education a kid gets in Bolton or Uxbridge or Napanee is exactly the same as the education a kid gets in downtown Toronto, that he or she has the same access to educational institutions, the same access to other learning experiences? You can apply that to almost anything we do.

The reality, as I see it anyway, is that we do the best we can. We write laws and we write regulations and we write objectives and we write standards and we do all kinds of things and we try to balance it out, but we are lying when we say that every Canadian in every part of the country has exactly the same opportunity as everybody else, because that is not true. Whether you are talking about roads or hospitals or schools or access to the courts or access to jails, it is all different.

What governments try to do is attempt to normalize, so to speak, to provide access in the broader sense. For example, we did a bill here which provides, we say, access to people from northern Ontario to the high-technology hospitals in southern Ontario. But we would be lying if we said the access is exactly the same. What we do is give you the right to get on a helicopter and then on a plane and get transported to one of the high-technology hospitals. That is supposed to be the same as somebody having an ambulance deliver them in five minutes? Well, it is not, and we know that.

I am not as concerned as you may be about whether we have national programs with objectives or standards or whatever, because I believe the critical point in there is the intention of the government. How do they want to deliver a program, and can they successfully design one that seems appropriate to the people they are trying to serve? I would like to hear your comments on that because you have brought up that argument again.

Mrs. Towns: I think, as a starting point, it is important for people in Ontario to realize that we live in a rich province. I do not think that is a tired saw. I think that is the truth. In addition, Metro--and of course the province represents, geographically, more than simply the Metro area--happens to be a reasonably wealthy area. So there is some plan to our view of what is available to people, because we are lucky enough to live in Ontario.

It is true to say not every Canadian has equal access to a hospital, but at least we are starting and once they get to the hospital, they have equal access to obtain the operation they need, and that is the concern.

Mr. Breaugh: You could argue about that.

Mrs. Towns: Yes, it is true we could argue about that, but that is the theory. At least we are attempting to start from the same place for everyone. I think this is an important part of the Canadian concept, because otherwise we simply would not be a nation. We are a nation of incredible diversity, and why do we care? As was stated before, coast to coast to coast

there is such a diverse range in this country that in some ways it seems nuts for us to stay together as a country. But, obviously, that is important to Canadians.

It is an important part of the Canadian concept that we consider that there are fundamental social rights--if I may use that phrase--such as access to medical care and access to education, and all Canadians should at least be starting from the same point of view. The dollars allowable--and that is what we are talking about here--should not be an issue. For example, if one Canadian in Vancouver was to be eligible for a greater Canada pension plan than a Canadian of similar qualifications in Winnipeg, this would not be allowed.

Mr. Breaugh: I appreciate what you are saying and I have some sensitivity for it but then, every time, I get down to the last little example you used, that your pension dollar is the same. My dad lives in Napanee. His pension dollar in that small, rural, eastern Ontario community is not too bad, mostly because his housing is fairly cheap there. If my father lived in downtown Toronto and was unable to get into some kind of subsidized unit, his exact same pension dollar would not be worth nearly as much to him.

We try as best we can to give reasonable access, to set reasonable standards, but it is very difficult to do that. I almost get the impression that some groups feel that, if we get the right words put on pieces of paper in Ottawa, all of a sudden, magically, from one end of Canada to the other, the exact same program will appear. It cannot and it will not. It never has and it never will.

Ms. Vendrig: I think, earlier, you were talking about the faith and the spirit of the Meech Lake accord and of the Constitution. If we do put the right words down, then that spirit is there. As it stands now, the spirit is not there and the faith is not there. As the years go by, that spirit is still not going to be there. That is something that Canadians are not going to have in front of them that they carry on as their rights and as their beliefs. I think that is why it is important to get those words right. As you say, that is all we can do now, but it is good enough.

1520

Mr. Allen: I cannot let you get away with that, not because I am mean but because I really think it is very easy for us, just in the way Mr. Breaugh set out with this questioning, to suppress a whole lot that is there that says exactly what you want said and tries to get it done and remains in the Constitution. For example, section 36 of the Constitution Act, 1982 has the whole section on equalization of regional disparities. It talks about all that business of maintaining the promotion of equality, access, the provision of economic and public services and so on. It is all there.

Ever since the Rowell-Sirois commission at the end of the 1930s, we have had a principle in this country that has undergirded funding now for the better part of half a century. It says that there shall be equivalent services for all Canadians in all parts of the country without an unequal tax burden. That applies to certain basic services that we have come to recognize in a civilized community.

It is broadly structured out there. Those ideals and objectives are very well entrenched right now. If you look at the wording in the charter around equality rights, it is unequivocal. There is nothing you could say that was



anything stronger. Every individual is equal before and under the law and has the right to equal protection and equal benefit under the law without discrimination. It goes through all the list, and that is there. Nothing that can be done in the language of Meech Lake is going to alter that fact.

If you come to the concerns that you have about the clauses in question around section 16, go back and read the language. If you go back and read the language, you find that the language of sections 25 and 27 is, "This charter shall be interpreted in a manner." It does not give anybody anything, it just says "interpreted in a manner." "The guarantee in this charter shall not be construed so as to abrogate or derogate from." They do not give you anything particularly in those clauses.

But if you take the clauses that do address specific guarantees that are new, straightforward and clear in the charter, the language is very different. Section 15, which I just quoted, is very direct. Section 28 in the charter says, "Notwithstanding anything in this charter, the rights and freedoms referred to in it are guaranteed equally to male and female persons." That is very different language. Those are substantive things. They declare what the rights are.

Then of course you get on to the question of application. We have been into that business now: what parts of the country are obviously likely because of very favoured positions geographically; economic concentrations; networks of communications; transportation, and the fact that the hospital has to be somewhere and therefore it is closer to somebody than to somebody else. All those things begin to nibble away at the ideal.

I think it would be wrong for us to come out of these hearings, both as a committee and as a group of presenters who come here, and somehow to have the sense that there is not anything that is very clear or firm around the whole question of equality in Canada any more. That is a real impression that I do get from many presentations. I think it is a case of putting ourselves on the rack and then turning the handle, so that we get that excruciating feeling that we are being tortured, but we are not. We are in some respects, here and there, now and then, and we have to look after that, but there is lots of language there around equality.

What is your reaction to that? I do not always get this worked up around these questions, but there really is something there to defend and it is really good as far as the goals are concerned. It is very strong stuff.

Mrs. Towns: I think it is important to note that section 16 of Meech Lake comes after the charter. In my understanding of court interpretation, any interpretation of Meech Lake would have a stronger holding because it came after the charter. Because the charter was first, there is a subsequent act that would be seen to be stronger or more reasonable or of higher priority, because it does come subsequent to the charter.

Mr. Allen: Meech Lake would if the clauses were of an equivalent kind, but they are not clauses of an equivalent kind. What you are ranking is two interpretative clauses over against section 2 of Meech Lake, which is also an interpretative clause. What is being said is that, as you go about the interpretation around the English-French stuff in Canada, around the dualism and around Quebec constituting a distinct society, as you go around the interpretation of specific pieces of legislation and their impacts in the light of that, then these two items are not to be abrogated in that respect, because they are also interpretative items of the same kind.

That is what I mean by equivalent clauses. Therefore, as earlier equivalent clauses, they have to be inserted in order to protect them against the worst possible imaginable impact to the distinct society. But I do not see

them as equivalent clauses to section 15 and section 28 in the charter, or with respect to many other items, for example, minority education rights in the charter, because those are direct, declaratory, substantive statements about rights. You see? There is a difference.

Mrs. Towns: Yes, I see, but they were passed prior to section 16 of Meech Lake. That makes a big difference, because in any consideration a court is going to say: "Well, here's section 16 of Meech Lake and here's the charter, but this was passed after. They specifically listed, 'Let's protect these two rights,' and they didn't list all these others and they must have known what was in the charter. So they must have meant that these rights have more priority than these rights and these rights refer to 'distinct society' and 'linguistic'"--I am sorry. I do not have it in front of me; I do not have the exact word. If rights are abrogated by section 16, that is the manner in which they are abrogated. The very question "if" is, as I have indicated, what scares women's groups. We feel it is too big an "if."

Mr. Allen: OK. I just wanted to get the countervail out there.

Mr. Cordiano: I want to thank Mr. Allen for asking most of the questions I was going to put forward. I do want to point out one thing with respect to your statements about Madam Justice Wilson's comments on the separate school funding issue. I do not have the specifics in front of me but I will try to recollect some of the arguments she made. You say she pointed to the British North America Act and the section pertaining to dissentient schools.

But there is something right in the charter, section 29: "Nothing in this charter abrogates or derogates from any rights or privileges guaranteed by or under the Constitution of Canada in respect of denominational, separate or dissentient schools." It is right in the charter. So you could point to charter itself and say, "There it is, a guaranteed right in the Charter of Rights," that you are basically going to have dissentient schools or schools based along denominational lines. The court can not only look back at the BNA Act, but also it is right in the charter.

Therefore, it is not really a deviation for the court to look at the BNA Act and say that overrides the charter because it is in the BNA Act, that it is also in the charter itself. That is a right that is right in there and pretty hard to overcome. It is in both places and it is pretty clear. That is why the decision on separate school funding had to be the way it was and Bill 30, which we put forward, was upheld by the courts because of that. I do not think it could have been any other way.

I do not want to go over what Mr. Allen has said, but those are my comments. I would just point out that certainly there are no rights granted in section 27 with respect to multicultural heritage. There is no such thing as multicultural rights, certainly not granted by the charter. I cannot point to anything that says we have a multicultural right to this or that. It is merely an interpretative clause.

I think we would have to take into consideration, with respect to



legislating, the fact that we do have a multicultural existence in this country, something that is very hard to pinpoint. We certainly make mention of it in whatever we do, but sometimes we have some very difficult battles about just what that means and how far we are prepared to go in terms of claims that are made in the name of multiculturalism.

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I would argue that there are no multicultural rights that are defended or that are upheld by Meech Lake vis-à-vis the charter. Again, I do not want to take too much time on this because I have argued with a number of people on this question. We have asked a number of questions of people who have come before the committee on this, and fundamentally there seems to be a notion that there are rights in section 27.

The language is pretty clear. There are no rights there. It is an interpretative clause and states it clearly. I want to know from you if you agree with the fact that the language used in section 27 is pretty clear. I do not know if you have had an opportunity to look at the charter, and section 27 specifically, with the language that is used there, but the word "interpreted" is right in there. It is hard to dispute that.

Mrs. Towns: I do not think I am familiar enough with section 27 to answer your question, to be frank.

Mr. Cordiano: Fair enough. I want to point out that what Mr. Allen was saying is that section 16 of the accord speaks to two interpretative provisions. It was felt that because you are dealing with the "distinct society" clause in section 2 of the accord, you are dealing with cultural matters and therefore it is necessary to bring section 27 and section 25 back into the Meech Lake accord. There were no disputes about the level of importance of those two things with respect to another interpretative clause, the "distinct society" clause. Anyway, he made that point, and I do not want to go on about this.

Mr. Chairman: One of the things we have found over the six weeks so far is that just when you have reached the point where you think you have heard every aspect on a certain point to do with Meech Lake or the charter, you suddenly find that there is still a whole series of other kinds of issues or questions that somehow will bubble up as you try to go through it.

I think almost every day we are starting to wrestle with certain new aspects and elements. As has happened, we have dealt this morning and this afternoon particularly with issues related to the question of the charter, the relationship of the charter to the accord and to the question of opting out, because this morning we dealt with that with one of the disabled organizations.

I suppose it underlines the number of questions that arise. What at this stage in particular we are doing as we go through this with you is trying to clarify points and at times coming at it from another point of view, to try to see if we are understanding what it is we think we have now learned, because that may be different from what we thought something meant a week ago.

I would like to close, if I might, with one question. One of the issues we have had raised is specifically around the question of women's equality rights. In your organization, the Canadian Federation of University Women, do you have francophone clubs, and have there been any discussions or are there likely to be discussions with them around this issue?



Being an Ontario committee, we are not like the House of Commons and Senate, where we can go all over the country and talk with a number of groups in different provinces. We know there is a difference of opinion here, at least with some of the Quebec women's organizations, about some of these issues. I wonder whether, through your own organization, which is a Canadian-wide organization, there have been any discussions, or whether there are to be, of this particular issue.

Mrs. Towns: I can advise you that CFUW does have francophone clubs in Quebec. Generally, our divisions within provinces are regional. In Quebec the division is Quebec English and Quebec French and each has a provincial or regional director, if my memory of the organization is correct.

I am not sure what the status of discussion with the francophone clubs is but I do know that in Victoria, in August 1987, at the annual CFUW meeting, a resolution was put to the body with respect to Meech Lake, specifically questioning the gender equality provisions. It was feared that there was difficulty with those gender equality provisions, and I believe the resolution also dealt with the opting-out provisions, although I am not certain.

In any event, the resolution--because it was an emergency resolution and had not been circulated to the clubs beforehand, which is normally the procedure of CFUW in determining its policies--was passed unanimously, and there were members from the francophone clubs there.

Mr. Chairman: Thank you. I wonder if it would be possible to get a copy of that resolution and make it available.

Mrs. Towns: Certainly.

Mr. Chairman: It is just one of the elements that at times we are interested in that discussion in terms of how people are viewing the way that the Charter of Rights is impacted.

On behalf of the committee, I would like to thank you for coming this afternoon. It has given us a chance to do a number of things, including providing Mr. Allen with an opportunity for a spirited defence of the charter. It has been very helpful. I would like to underline, for you and also for your colleagues who were here before, that we quite appreciate your scepticism about the process, and what we, as a committee, are doing. I think that is normal and natural in terms of how we have come to be here and how you have come to be before us.

I suppose what we as a committee have done is simply say there is a given that has been placed in front of us in the way in which this issue came here. From the beginning we have said that we have to, as we listen to you and others who have been before us within this committee room, try to come to grips with the accord individually. After all, our mandate is from the Legislature; it is not from the government.

There are clearly other matters that affect us because the first ministers signed the accord. Individually, as members of different caucuses, how are we going to deal with that? I think the first step in all of that is listening very carefully to what is said to us and making sure that that does get back in our case to the Premier, to the leaders of the other two parties, as we proceed to the point where the Legislature will make a decision.

Finally, whatever we do in this committee and whatever the Ontario

Legislature does, there are at least two other provinces that have indicated that they are going to have hearings. The accord does not have to be ratified until June 1990. There are a lot of factors, a lot of things that are going on.

I appreciate the fact that you took some time to prepare your brief and come before us, even though we do not know where this is all going to lead. If people do not do what you are doing, then there are no possibilities for review and trying to look at how we can incorporate the valid concerns that people have expressed. If that did not happen, then in fact nothing else would. We appreciate your coming before us this afternoon and we will be looking very seriously at what you have said.

Ms. Vendrig: Thank you.

Mr. Chairman: I will now call upon Professor Thomas J. Courchene of the Robarts Centre for Canadian Studies, York University. I want to welcome you here this afternoon. We have received a copy of the submission that you had forwarded to us. As always, with our afternoon sessions, time begins to slip away, but I will underline that we have found there are many people who want to express different views and opinions. I think we have taken the position that we want to try to make sure that happens. If we happen to be here a bit longer, we certainly intend to hear you and to talk to you, as well as to the last witness. I want you to feel very free to make sure that we understand your views and concerns, and we will follow up with questions.

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DR. THOMAS J. COURCHENE

Dr. Courchene: Thank you. My paper is very long and I will not be able to cover all aspects of it. For example, I feel quite strongly that one part of Meech Lake that is going to have an important impact is the fact that it effectively creates a House of the Provinces but I will not have time to talk about that today.

Thank you very much for inviting me to appear. I will highlight before this committee a few of the issues that I think are important. My background is that of an economist but, as will become evident, I will probably go beyond the frontiers of my own discipline and very quickly be on the frontiers of my expertise. But I think that is what the nature of this exercise is all about.

Mr. Chairman: That has not stopped anyone.

Dr. Courchene: Right. I am just indicating that it may not stop me either.

I want first to focus on the spending power provision. The bulk of the discussion here is apparently whether the net result is centralizing or decentralizing. My own view is that both Ottawa and the provinces get additional flexibility. Ottawa now can roam free, as was indicated by Mr. Breagh or perhaps Mr. Allen before, in terms of shared-cost programs in areas of exclusive provincial jurisdiction, a substantial concession.

The provinces, for their part, can opt out of such programs by mounting parallel programs compatible with national objectives. This does confer some extra powers on the provinces, but I remind you that opting out is a well-established tradition in our nation. In fact, I argue elsewhere in the paper that opting out is really a solution to many of Canada's problems; it is not a problem. I will elaborate on that if you want.

Overall, my hunch is that this feature is a centralizing feature. I know others take the opposite view but I think that is all really beside the point. The point is that the dominant feature of our federation over the last 20 years has not been the division of powers per se, but rather the fact that the traditional, watertight compartments that we had are rapidly and irrevocably giving way to interdependence.

Virtually everything Ottawa does, even if it is wholly in its own jurisdiction, is going to affect in some way provincial programs, and vice versa. One result of this is that the provinces are, almost of necessity, becoming the official opposition to the government of Canada in many issues, in part because they have a civil service, whereas the opposition in effect does not. But this is natural and will continue.

The essential point is that federalism is becoming less and less a matter of the division of powers and more and more a matter of process, the process of adopting joint policies and making joint decisions on joint problems. Here, I think, is where Meech Lake is going to have its most extreme value in terms of the spending power process.

Let me give you one example. In the Toronto Star over the last few days, one read about the problems besetting Ontario's health sector. This is particularly a problem in terms of the ageing of the population. But ageing creates other problems: increased money for pensions, for housing.

With the Meech Lake process in place, I can visualize an entirely new type of shared-cost program, one that cuts across both levels of jurisdiction, namely, a shared-cost program for the elderly that encompasses hospitals, medicare, drugs, welfare, housing. With Meech Lake in place, Ottawa can initiate such a global approach.

Some provinces may opt out--I suspect Quebec would but I doubt whether the other provinces would--but without Meech Lake and without that process, I think it is impossible to conceive how such a program could come about, because there would be constitutional challenges flying in all directions. So I think the exciting thing about the spending power provision is it opens up the process, and that is what, in part, federalism is becoming when interdependence is starting to play an important role.

I will make a final point on the spending power. Critics have pointed out that the provision will effectively spell the end of shared-cost programs. Obviously I disagree, but apart from the recent day care program, there have been no new shared-cost programs over the last 20 years, so this is hardly a criticism. If we have not been able to do these things in 20 years, how can Meech Lake make it work? In my view, as I said, Meech Lake will breathe new life into such programs because it addresses the key issue of modern federalism, namely, the process dimension.

Likewise, I am very excited about the Supreme Court provisions. They can equally be classified as winners under Meech Lake. First, Meech Lake constitutionalizes the court. Therefore, it makes it a national institution rather than what it was before, which really was a federal institution because it was a creature of the federal parliament.

Here I support the view of Peter Hogg in his recent book on Meech Lake that, "It is inappropriate that the court which serves as the guardian of the Constitution should be unprotected by the Constitution." But given that it is a national institution, it then makes eminent sense to have some role for the



provinces in the appointment procedures to the Supreme Court. Most other federalisms do this; in fact, every single constitutional reform proposal from 1971 incorporated this, and most of them incorporated it with respect to multilevel courts, not just the Supreme Court.

I recognize that the Canadian Bar Association has a different view of the appropriate process. They want an advisory committee in such appointments to be composed of the chief justice of the province, delegates of federal-provincial attorneys general, lawyers and laypersons. I have no problem with this, but surely such detailed mechanisms do not belong in the Constitution of Canada. If the committee is in favour of such a process, it makes eminent sense to recommend it for consideration to the Legislature and to the government of Ontario. But I do not think you should criticize the accord because it does not go to the very specifics of how you implement some of these things.

Meech Lake has come under considerable criticism in regard to the amending formula. Under the Constitution Act, 1982, the 7-50 provision was in place, plus some unanimity, and Meech Lake, as you obviously know, moves a few of those provisions from the 7-50 to the unanimity area. I suppose there are two ways in which you could handle the amending formula: put it on a regional basis or on a provincial basis, i.e., unanimity. Both of these would have been preferable to the old 7-50 formula, because under the 1982 formulation, Ontario and Quebec acting together could veto all constitutional amendments, but no other three provinces such as the Maritimes or the Prairies could do this. That is not a very federalizing aspect of the Constitution.

The attraction of the Quebec proposal to the provinces, other than perhaps Ontario, is that while Quebec wanted a veto, it was perfectly willing to grant that veto to every other province. I think that is partly what made the package so appealing. This is clearly very federalizing in its impact, and since I classify myself as very much in favour of Meech Lake and federalism, I obviously welcome that.

The major issue here appears to be the entry of new provinces. The point is made over and over that the Meech Lake unanimity requirement means it is less likely that we will ever welcome new provinces into the federation. I think this is wrong for four reasons. The real problem is not Meech Lake here but the Constitution Act, 1982. Prior to 1982, Ottawa alone was responsible for admitting new provinces as long as the existing boundaries were respected. That is how we got Saskatchewan and Alberta and how we got Newfoundland. In 1982, the 7-50 formula applied, so this was the real constraint, the first constraint. Meech Lake, I agree, makes it a little more difficult.

Another point is that if Meech Lake does not go through, Quebec will not be at any future constitutional conference, or at least that is my impression. Under such a scenario, I cannot believe that Ontario would vote for a new province without its sister province at the constitutional table; that is, Ontario would not again isolate Quebec on a major constitutional issue. If that is the case, there are no new provinces without Meech Lake, so Meech Lake is necessary to get new provinces only because it brings Quebec back to the constitutional table.

Finally, it seems to me that the provinces that have the most to lose and therefore ought to have a say are the equalization recipient provinces because when you bring in new provinces, they are not going to affect Ontario very much but they may affect the way in which Canada redesigns the limited pie of equalization. I have no problem in justifying the fact that unanimity

in this section is important and, therefore, I welcome the concept that all provinces are involved in introducing a new province.

Moreover, since a new province would require an amendment to the amending formula, which in turn requires unanimity, it only seems consistent that getting that new province in should also require unanimity. My own view is that when the territories are ready to accept provincial status, the provinces will not stand in their way but, without Meech Lake, there is no chance, it seems.

Finally, I have a couple of points with respect to the distinct society. I am on the side of those who argue that as an interpretative clause it will not override the charter and, in particular, it will not override sections 15 and 28. Again, quoting from Peter Hogg: "A law passed to preserve linguistic duality or to promote the distinct identity of Quebec would, like any other law, have to comply with the charter. If the law was contrary to the Charter of Rights, then the law would be invalid." I have no concerns about this part, particularly because a distinct society obviously involves both sexes, so that it is hard to see how it could be discriminating against one of them.

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There appears to be a second concern related to the issue of Quebec's role to preserve and promote the distinct society, but Ottawa and the provinces' role is only to preserve the fundamental characteristic of linguistic dualism. The francophones outside Quebec appear to want this duality to be promoted by all the provinces, but I doubt whether this would be acceptable to most of the provinces because, if you added the words "preserve and promote" it would be fairly close to requiring official bilingualism on the part of many of the provinces and I think this request is unrealistic.

What is possible is that provinces inclined to do so can adopt measures in their own legislation that will promote the new linguistic duality. I am not saying here that the distinct society does not mean anything. I think it does mean something, but it means something, in my view, in the institutional area more than in the charter area. But that is in my favour.

Just as a final comment, Ontario has played an incredibly special role in the constitutional process and 1988 represents the coming of age, 21 years ago, of John P. Robarts' Confederation of Tomorrow Conference. Meech Lake is, in effect, a culmination of Ontario's 1967 initiative. In the interim, Ontario was willing to isolate Quebec in 1982 and, in the process, Quebec saw some of its powers eroded. On the other hand, Canada gained something from 1982, namely, the Charter of Rights and Freedoms and whatever goes along with the Constitution Act, 1982.

Now I think it is time for rapprochement, and Ontario's position is absolutely critical here. Meech Lake incorporates a very reasonable set of demands to bring Quebec back fully into the constitutional family. I hope the committee will endorse the accord wholeheartedly. At this point I think we are all aware that the accord probably needs a dose of support, at least from the perspective of those who support it.

I do not think the negativism in the land about the accord is well founded but I can understand it. All sorts of horror stories can easily be generated with respect to the accord. Equal numbers of horror stories could have been projected with respect to the 1982 charter. The difficulty for those who try to defend it is that they are just going to say, "No, those aren't

true." But that no does not get a good headline very often, whereas the other side does.

So I would argue--and it is not really my role to do so; I am really stepping beyond the limits of an economist here--that we are at an historic process. Ontario started this issue off by enthusiastically endorsing the accord. The committee would really help put the accord through. As to the whole notion of who speaks for Canada that people talk about when they relate to the accord, I think the correct answer is that Meech Lake speaks for Canada. Thank you.

Mr. Chairman: Thank you very much and thank you too for your paper which we do have. I know, having read it, that it really elaborates on a lot of the points, with others, that you have made this afternoon. You note the point of the various views that exist about the accord. As members of a committee that has been sitting here, and also in a couple of other centres, we are aware of a lot of differing perceptions about what it does and what it does not do on virtually every topic.

You have been with us for a while this afternoon. Let me share with you a problem that we have, that is, the whole question of charter rights. The relationship between charter rights and the accord has come up time and time again, particularly with respect to women's rights. Regardless of whether in fact there is a legal case there--and you have heard that we have had constitutional experts on both sides--we are trying to wrestle with a perception which may or may not be real, apart from what the truth is there.

None the less, a large number of people believe that something has been taken away or that the chances that something has been taken away are so real that we cannot, we should not and we must not move on to approve that accord, without bringing about that change. But it seems to be impossible to try to go back to Quebec and say, "Look, most of the people, if not all, who want to see a commitment to equality rights, particularly women's groups, are not saying no to Quebec, are not saying no to the distinct society, but feel it is unfair that, as the price for that, they cannot pursue this particular issue and have it clarified." Quebec is saying to them: "Look, this is a package. You have to take it or leave it. We'll deal with these later." Do you see it as being a fundamental problem that if a province were to try to argue very forcefully with Quebec that the accord had to be opened up again, that is just an impossible route and is not going to happen?

Dr. Courchene: I think it is a fairly difficult route. I would not go as far as saying it is an impossible route. There always is the option of endorsing the accord and then starting off another amendment and shipping it around to various legislatures. If it passes 11, it becomes law. One finds out very quickly if it is a problem. That process is much more likely to appeal to Quebec than starting to open up the accord. Once the accord is opened up on one issue, I think it will be opened up on all issues.

Mr. Chairman: Could you elaborate a bit on that point? We have had different groups talk about the companion resolution or motion, and a number of the aboriginal groups have actually drafted a companion resolution and left it with us, for us to look at. That is pretty new in Canadian constitutional development. It was noted that British Columbia tried it with property rights, but I think that is the only one we have had. How do you see that working? Do you think that is a valid approach in this new period of greater provincial involvement in constitutional change?

Dr. Courchene: I think the political scientist and the institutional



expert is going to follow me. He might be a better person to ask that question of. But I do not see that there is anything wrong with that process. All that has to be done is to have it ratified by 11 governments. I suppose the only time it could run into a problem would be in a minority situation, where the Legislature said yes but the first minister said no. You might run into a problem, but I have not thought about that. Apart from that problem--

Mr. Chairman: But the concept, you think, is sound?

Dr. Courchene: Yes, I think so. I talk about the process at the end and I realize that the fact that the charter has democratized the Constitution and the amending formula has put it back in executive federalism is unacceptable to a lot of Canadians. We have to somehow work that out. That is the procedure Meech Lake was working under and we may need a special constitutional conference to look at that. I suspect it is going to be difficult to change it.

The reason we have these accords is because we have responsible government. We have to recognize that. Suppose Ronald Reagan and the 50 states decided to set up a Meech Lake accord document and signed it. They cannot deliver their legislatures, so it does not mean anything. In this system of responsible government, where there are majorities all over the place, if the first ministers can deliver their legislatures, you can get this sort of system. It may look as if it is just 11 men--or 11 persons; men in this case--but none the less, it comes to us, strangely enough, from responsible government. That really is a problem that people are also grappling with.

Mr. Offer: Thank you for your presentation. In your presentation you alluded to the word "process" a number of times and, in response to the chairman's opening question, you alluded once more to process. In general, without being simplistic, there are two concerns: one where people bring forth their opinions about the particular constitutional reform being talked about and the other where people talk about the constitutional reform process.

You are a supporter, as you have clearly indicated, of the Meech Lake accord. The accord itself states that there are going to be constitutional conferences, the first one of which is going to talk about--and I use the words--the Senate reform aspect.

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Dr. Courchene: I think it says all of them are going to talk about it, does it not?

Mr. Offer: Yes, that is correct. But with respect to the fact that we are now looking at an accord which does say that we are going to have a constitutional conference in the event that this is ratified as per agreement, then we are going to have that conference and it is going to bring to the fore some of the concerns, some of the fears of others with respect to the type of process which is going to be instituted and whether they will be able to input their feelings with respect to Senate reform or the roles or relations with fisheries.

I am wondering if you have directed your mind to helping us out in grappling with this whole question of what that process ought to be or whether there should be a process. Is there a necessity for change, keeping in mind the very real feeling that people have with respect to how the Constitution can affect their lives? I am wondering if you can help us out. You might want to use the Senate as an example.

Dr. Courchene: Let me start by saying that one of the problems with Meech Lake was that it crept up so suddenly. People just did not think there was any chance that this thing would get through, and then there was only one month between Langevin and Meech Lake, or whatever it was. Afterwards, it becomes difficult, so I think the role for the process is to make sure--if Meech Lake is passed, presumably these constitutional conferences will have some lead time. Then I think the committees go to work before.

The agenda items will be fairly obvious. Senate reform is going to be one of them. The committees can start working before the constitutional conference and report to the legislatures, so you get your input at least twice but, importantly, beforehand. That is when I think the input is most valuable, because it is very difficult if it is this procedure whereby it ends up with a signed pact. It is a wicked problem at that point. You are in trouble if you say no and you are in trouble if you say yes, because you do not respect the rights of the average Legislature.

I think the House of the Commons and the Senate may do this. In fact, I think the joint committee did recommend that next time around, before these constitutional conferences, they will have hearings with respect to the issues that are on the agenda. That is one aspect of process that one can look at. Then I suppose the whole issue of process can become an agenda item, so maybe there should be hearings on the process.

Mr. Offer: You are saying there is the role for provincial legislatures, if they are so inclined, to set up their own framework with respect to the agenda as they see it--

Dr. Courchene: In advance.

Mr. Offer: --in advance, and then make a report to the Legislature for use at the upcoming constitutional conference. In your opinion, would that meet the needs of those who are concerned with respect to any change?

Dr. Courchene: I do not think you are going to meet the needs of all those who are concerned, because these are compromises. There are Canadians on both sides who will have legitimate views that are conflicting and they are obviously both respectable positions. You are always going to get feelings among those who lost saying their views were not heard and those who won being happy with it. That part you cannot solve, but I think that at least it will allow a much more open process ahead of time and the ability to draw on all the special interests.

One of the things that does bother me a little bit about Meech Lake, though, is that it almost appears that if you are not mentioned in each constitutional round, you are out of the Constitution. I think Don Jamieson referred to it as the Christmas tree effect: if you do not have a light on in the tree this particular year, you are gone. The fear is that when you do something on fishing, you do not have to talk about multiculturalism again.

We have to learn that those rights are enshrined, that they are there and do not have to be mentioned every time we have an amendment. I understand why everybody wants to use each occasion to increase the degree to which his concerns are entrenched, but I think there is a problem. That was mentioned before. The Constitution is there; if you are not mentioned in this amendment, you are not out.

Mr. Chairman: Just as a companion question on that, one of the

things, though, that has struck us--and your point is a very valid one--is that because of the fact it snuck up, in a sense, on people--one can show there were a lot of meetings and so on, none the less--in a broader public sense, and because of the fact it was signed and sort of presented as, "Thou shalt accept this accord," one of the real dangers has been the credibility of the system to handle change in a broader public way.

What has struck us is that wherever we go from here, it is very critical that we elaborate some public participatory input into the constitutional system or we could be running into very grave problems with the way people accept those changes. That is a worrisome aspect which I do not think people necessarily realized at the time, nor perhaps should they have, in that what they were doing was what had been done previously, but it is one of the after-effects that people feel they were somehow cut out of that whole process. We have to find a way to get them back in or I think we will all suffer.

Dr. Courchene: I think there is a political immorality view in the land that no matter how good Meech Lake is, even for those who like it, the means do not justify the end. I really have not given enough thought to this issue to really help you out, but I think it is something to worry about, although I really do not know how you are going to get away from the fact of the current amending formula. It is going to take unanimity to change that.

There are alternatives, I suppose. You could go to referendums. You could go to some direct interest group influence. I do not know. Good luck. It is a very tough issue.

Mr. Allen: I am not sure that the last questions have not exhausted most of what I wanted to ask, but I thought your observation that federalism is becoming less and less a matter of power and more and more a matter of process was very helpful. I wonder whether you are concerned that in becoming more and more process, it in some ways becomes more difficult to cut in on the issues.

When your territory is defined, your powers are clear, your relationships are known and people know where they go to make this representation or that, who has got this power and that power, who to see and all the rest of it, in a sense it is more conducive to fostering a clearly functioning democracy, and yet at the same time obviously the rigidity creeps in and it becomes impossible to function with the old wineskins.

Does the opposite happen with respect to a system increasingly focused on process, where it becomes more and more the bureaucrats and more and more the people at the top who are really plugged in, and therefore they are the ones who push the buttons and move the players, and it becomes almost implicitly more difficult for people who are not formally part of the process to get in there?

In the light of that, I think some of the discussion we have just had becomes very important because it does imply new ways of getting into the flow, as distinct from being in your single place, your compartmentalized power or what have you.

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Dr. Courchene: Can I respond to that? I think that is a very valid point. I am just in the throes of writing a paper called The Tragedy of the



Commons. It relates to the British political economy commons, where individual maximization and all of those things that right-wing economists like will not save the commons, because each herdsman will put another cattle beast in there and eventually overgraze it.

I believe the House of Commons is being overgrazed, and all the legislatures. With the Commons in particular, you have the charter, which we no longer have--now we have judicial review based on fundamental justice; we have the Senate, an obstructive Senate, made more problematic by Meech Lake; and we have executive federalism, the things we are talking about today, federal-provincial pacts.

In the process, while we may be democratizing things because of the charter, and individual citizens can use the courts in this more direct access to power, we are losing the traditional British parliamentary role for the House of Commons and the legislatures. I think that is really quite something that should be thought about very much, because we are slowly moving, unwarily, as it were, towards the US checks-and-balances system and towards a separation of powers.

I think executive federalism complicates this very substantially. That is why I think in the next round on Senate reform you are going to see much more interest in it by Ontario and in particular by Ottawa. As for the Commons, there is a tragedy, not in the sense of being necessarily bad, but a tragedy in the sense that things are happening that seem to be out of its control.

I think we are changing the ways that citizens view their governments. It is not clear that we know what the end process is going to be like. I do not think I have responded exactly to what you phrased, but I think it is a very real concern which Meech Lake in some sense exacerbates.

Mr. Allen: I think you did respond to the essence of the question. I just had one small item. As you were going quickly over your points on the issue of new provinces, when you said that the problem in the first place was not Meech, it was 1982, was that simply that at that point we made the first break from the old amending formula and therefore that is what got us into this, or are you saying more than that?

Dr. Courchene: No, just that; seven and 50 is very different than just one, just Ottawa, and seven and 50 without Quebec really means Ontario has a veto and nobody else has a veto. If Quebec is already not going to be there, Ontario will knock it over the 50.

I am originally from Saskatchewan and I think I carry some of this view through to my living in Ontario. I guess I am known in the system as a decentralist, but I also think that, for all sorts of reasons, the federation is changing. One of the things that is happening is, is it that we are federalizing?

Meech Lake is decentralizing; it is decentralizing the role of the provinces. You are giving more and more power to the individual provinces and less and less to Ontario and Quebec as a group. In that sense, you are federalizing the system. I think it is hard for a lot of Ontarians and a lot of centralists to accept that, but I think it is inevitable. I do not say I am right, I just think it is inevitable. I have totally forgotten your question. I am sorry. I may, by mistake, have answered it.

Mr. Allen: I would say you did it quite deliberately and you did do it. Thank you. I appreciated your presentation very much.

Mr. Chairman: The last point you make is a very interesting one. It is one of the factors in terms of future process that is it going to be interesting to work out. As a legislative committee from Ontario or a legislative committee from Alberta, dealing with constitutional change which will be affecting the entire country, should those committees, if they are in existence, as part of their responsibilities go around the country to get different points of view?

I think your point is well taken that, especially in southern Ontario and Metropolitan Toronto, probably this is where we find the largest percentage of centralists in the country. Even in our own deliberations as we look at the accord in the context of, let us say, the Quebec round, obviously within our own membership we cannot reflect any Quebec members in the way the House of Commons or the Senate can.

I think it is going to be an interesting evolution as to how committees will determine, when looking at constitutional matters, how to have a sense of what different regions of the country might think about an issue versus their own thoughts. I do not have an answer to that, but it is interesting.

Dr. Courchene: Just as the House of Commons and the Senate have a special joint committee, there is no reason the provinces could not put up one member each and have a travelling committee that would feed back into their local committees. Remember that John Robarts's Confederation of Tomorrow conference did not include Ottawa. Did it not come? Ottawa suddenly realized that the issue was important and it had to get on the bandwagon, so it moved. You know, for things to be national, they need not be federal. There is a role for the provinces' nation-builders, as well as a role for Ottawa's nation-builders.

The process is very flexible, even though it is essential. I think a travelling joint provincial committee may well get each province around the inability that each one acting alone will find.

Mr. Chairman: I think that is a very stimulating thought on which to end. I want to thank you very much for your brief, which as I mentioned before, does go into detail on a number of those issues, and also for the particular perspective that you have brought to the accord in terms of how to look at it. As you say, the democratization of federalism and how that is reflected through the accord is an interesting concept, I think particularly for those of us in Ontario. We thank you very much.

Dr. Courchene: Thank you. I very much enjoyed this. I am sorry, I should have been more academic and less enthusiastic about the accord, but it is my version of Canadianism coming out.

Mr. Chairman: Perhaps I could now call on Professor Peter Leslie, the director of the Queen's University Institute of Intergovernmental Affairs.

I apologize, Professor Leslie. As chairman, I have not been doing a very good job of keeping us on time, although I guess I would simply add that as we go through this process, inevitably we find that it becomes very interesting in trying to get views out on the table and to give people a chance to set out their thoughts. I hope that while you have had to wait for a while, none the less we will have an opportunity to explore the Meech Lake accord with you and have a full sense of your views.

We welcome you here this afternoon, and we will make sure that you get

the 5:30 train, even if we have to sign a federal-provincial accord with Via Rail. We have a copy of the submission that you made, so if you would like to speak to that, we will follow up with questions.

PROFESSOR PETER LESLIE

Dr. Leslie: Thank you very much. I would like, first of all, to express my admiration to you and your fellow committee members for the perseverance and the stamina that you are showing in the weeks of hearings. You must be feeling at this point somewhat Meeched out, if that is a word.

Mr. Chairman: We have strong constitutions.

Dr. Leslie: Sure. In any case, since I am aware of the fact that so many people have been before you and that you have covered so many of the basic questions, I suspect over and over again, I am not quite sure what to say at this point.

As you just said, I do have a written brief and I understand that was circulated. It covers ground that by now will have been well trodden and I do not think it would be appropriate for me to try to go over the whole thing, by any means. For one thing, it would take all the time available.

So while, of course, I would be very pleased to elaborate on any points or take questions on any points that I raise in the written brief, I would now just like to touch on three points that I think arise out of the debate on the accord as much as out of the language and text of the accord itself.

Those three points are, first of all, the lack of precision in the use of language in the accord and the way that people have reacted to that. There is concern about the unpredictability of the consequences of adopting the accord, or the unpredictability of how it will be amended, and consequently the element of risk. That clearly is animating a great deal of the public debate. This afternoon I heard earlier presentations expressing an aspect of that.

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The second issue is the one that you have just been talking about with Mr. Courchene, the issue of process which, I think, as your own questions indicate, is clearly relevant both to the present accord and also to future steps in constitutional change and how we get public input. How do we get legislative input at an early stage in the process?

The third issue that I would like to at least touch on if there is time is the issue of decentralization within the federal system and, related to that, the overall capacity or the incapacity of government as such--and here I do not mean necessarily the federal government or the provincial government, but the whole governmental system, because so much policy is formed through a process of interaction--to meet the needs of Canadians and whether that has been altered in any fundamental way by the accord. There are three points then.

First, as regards precision in the use of language and consequent risk where there is imprecision, there have been lots of references already this afternoon to phrases such as "distinct society," and "linguistic dualism." There has been discussion of the impact of section 16 of the accord on the Charter of Rights, and especially on sections 15 and 28. There have been allusions to the spending power.



I think the standard reaction to the reading of such phrases is uncertainty as to what they mean. People are saying, "If we do not know what they mean or what they may come to mean in circumstances that we do not know yet, in those circumstances we shouldn't be using those terms." I have heard a lot of that kind of discussion in the public debate. I think the reaction people are feeling is, "Why should we take an unnecessary risk by using words when we can't really tell how they will be played out over time."

The way I react to that is to say that clarifications of the language that will reassure one group will alarm another. That is very evident if one compares the debate that took place in Quebec and in the hearings of the Quebec National Assembly with much of the debate in the rest of the country. Thinking about how that debate has gone, both in Quebec and elsewhere, I think it is unfortunate that more of the debate does not focus on the most likely interpretation, the most reasonable interpretation of the accord and of the provisions of the charter as they may be affected by the accord.

It would be salutary if the debate focused on those matters rather than on imagined horrors. The more one does focus on the horrors, the more you get demands for clarifications that will rule out what may appear really to be quite perverse interpretations.

This poses a general issue, and that is, we must remember that here we are addressing constitutional questions. We are amending in certain important ways a Constitution. We are not writing the Income Tax Act. I think there is a significant difference. In the Constitution, what we are doing, and particularly what we are doing in most of the Charter of Rights, is to ask the courts and the Supreme Court of Canada to be the conscience of the nation.

In most respects, we must remember that its rulings will not, in fact, be definitive in the sense that there is for most parts of the relevant sections the possibility of legislative override under section 33 of the charter. So I think really what the courts' future role is here is to wield essentially moral authority and to tell us when democratic majorities are infringing on principles to which we are all, through the Constitution, committed.

But when they make such statements and issue, for example, a decision to the effect that a particular piece of legislation or a regulation or even an administrative action is inconsistent with the principles in the charter, or most of them, there is still that escape hatch that the legislatures have. We, the citizens of Canada or the citizens of a particular province can say through our legislators that this is a particular case in which we would not wish the general principle to apply. In that context, this is a completely different kind of exercise than in the application of the day-to-day legislation with which you are normally concerned, such as the Income Tax Act.

What we want in this context is the simplest possible statement of principles with a minimum, and not a maximum, of cross-references and clarifications and "notwithstanding" and exemptions. That just adds a terrific lot of clutter. We want to get as clear as possible a statement of principle. We do not want to write a Constitution like the Income Tax Act which, after all, I do not think is really noted for its moral uplift. I think that is an important factor to bear in mind, that this is a different kind of exercise than much of the legislative process is. It seems to me the public debate has not made sufficient allowance for that rather basic difference.

There has been one suggestion that one could obtain clarification

without that kind of clutter through the use of a reference case. I guess I am pretty sceptical about that. I will not try to develop the point now, but if any of you should wish to pursue it, I am game to do so. This is still, then, on the subject of imprecision and risk, but especially about the concept of risk. While we are thinking about risk that may come out of imprecision, there is entirely too much public discussion about one kind of risk and not enough about another kind of risk. I am not talking about this committee specifically but the general public debate, and I am sure that has appeared; you have had this come before you.

The kind of risk that has received so much attention is what might a court do with the accord or how might it alter the meaning of the charter given the terms of the accord, but there has been much less overt public discussion about the different kind of risk which could be summarized in the question, "What happens if this accord falls to pieces?" It is a different order of risk. It is a more overtly political risk. I guess as I observe the debate and I think particularly of the interventions that have been made by the anglophones of Quebec and also by the francophones outside of Quebec--Fédération des francophones hors Québec inc.--I find that there is inattention to that element of political risk that is really very essential.

One of the things that I think is so essential in reaching agreement, as I expressed at the beginning of my written brief, is that this unfinished business of 1982 should be laid to rest and we can proceed subsequently to new phases of constitutional change and to carrying forward the business of the country, whether it involves the Constitution or not. If this thing does fall apart, and I am very concerned that it might, then I think there is a standing danger there at any time at which there is a new wave of nationalism in Quebec, as there may well be.

We know that the people of Quebec now are, on the whole, rather apathetic about politics. They want to not have any part of this discussion if they can avoid it, but we do not know how long that will last, and I think it is important to try to deal with that element of risk as well as with the risk that arises out of imprecision in the terms of the accord. That is my first general point.

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The second point is on the question of process in constitutional amendment. I would like to distinguish two rather different kinds of amendment and, consequently, different sorts of process that may be associated with those.

In the first place, I think there are, imaginable anyway, essentially single-issue amendments--to take a historical case, the transfer of unemployment insurance to federal jurisdiction in 1940. To take two issues actually mentioned in the accord, possible changes to federal-provincial jurisdiction over the fisheries or the redesign of the Senate or an issue that came up earlier this afternoon, the setting up of aboriginal self-government and its being written into the Constitution, such issues may come up, one by one. Then the contrast is with other kinds of constitutional amendments which are essentially negotiated packages.

My argument would be that it is a lot easier to get public input in the case of single-issue amendments because here you can have a sort of process that Mr. Offer was evoking the possibility of with respect to aboriginal self-government where any group can come forward with suggestions. This can, if desired, go through a legislative process. It can go on from there to first

ministers' conferences and so on. That way you can get a lot of public input and the thing may wash, it may not wash.

This would be an analogue; it may not be a particularly happy one, I am afraid, but an analogue would be the equal rights amendment in the United States and that kind of process. Of course, the reason it may not be a happy analogue is that we all know that failed. It is certainly a process that is filled with danger.

In any case, here you get public demands to which legislative majorities may respond and if you get enough of them, then you have a constitutional amendment, in some cases unanimity but the typical rule would be less than that.

We contrast with that multi-issue negotiations where each party, each government, goes into that process. Typically, the process involves a set of concessions in return for benefits or advantages that are judged by each of the governments to provide, on balance, a positive situation, so that the benefits or the advantages are of greater importance to them individually than the concession that they make.

That kind of bargaining process is one that it is very difficult to imagine being conducted in full public view. The negotiations or bargaining ought to be conducted--and this is where I think future changes in process can certainly be envisioned--in the fullest possible knowledge of public opinion, but I add right away, it is very hard to do that. I have, in a very modest way, a little bit of experience in that because it was the Institute of Intergovernmental Relations together with Le Devoir and l'Ecole nationale d'administration publique that organized the conference at Mount Gabriel where Gil Rémillard laid out the Quebec position.

In organizing that conference, I appealed to really a great many people to participate, people who had nothing specifically to do with government, no particular history before with constitutional affairs and it was extraordinarily difficult. The conference was not, in its composition, at all as representative as I would have liked. I might mention one group that I made a special effort to get representation from, women's groups, and it was extraordinarily difficult. There was a person there who represented, I think, the National Advisory Council on the Status of Women but it was very difficult to convince people that this was, for them, something that would have real priority. It had not become sufficiently concrete at that point.

Businessmen would say: "This is really not my métier. I do not know about these things and I have other things to do." It is very difficult to convince people that this is something that really deserves their attention at an early stage where there is maximum opportunity to sound opinion and to get an exchange of views.

I am not saying that is the only way in which it can be done. Clearly, I have never thought of it as being a representative meeting in a general sense, but it is illustrative of the difficulty of getting people to participate in that kind of discussion at a very early stage. I think it was even hard to do that in some respects between Meech Lake and the Langevin meeting, where we already had a text of an agreement in principle.

I would certainly emphasize that what Quebec did at that time should have been done elsewhere. I think it is most regrettable that there were not hearings in Parliament, that there were not hearings at the provincial level



outside of Quebec, where the principles could have been discussed and their significance perhaps brought out. In that case, the first ministers would have gone to Langevin with a much fuller knowledge of how the thing might play out in the public debate later on.

There is a problem there about getting that input. I think that might make a marginal difference, but I still see considerable difficulty, in part arising out of this problem, of which I am sure you are all aware: How much can governments reveal anyway of a negotiating position without, by that very fact, generating opposition to a negotiated result in which they do not have 100 per cent of what they went in for? Maybe there can be trial balloons of one kind or another, but then again you have the problem of how people can take that seriously. I think there is a real problem to be worked on here, but I do not know quite what the answer to it is.

The final issue I would like to touch on, and I can do so only very, very briefly, is the issue of decentralization within the federation, fragmentation of decision-making capacity at the federal level and possible incapacity of our governmental system to deal with basic problems.

I would just like to emphasize here that I think there is indeed a need for coherence between federal and provincial policies. Most major areas of policy-making do involve actions by federal and provincial governments. There is a process of interaction involved here, and I think there is certainly the need for an important degree of federal leadership in that process.

Essentially, we get policies formed through a process of interaction. Sometimes that involves considerable negotiation, sometimes it is done at greater distance, but the question we have to ask ourselves is in what condition the federal government will enter that process of interaction, that process of negotiation. The answer, it would seem to me, is basically that it would enter those negotiations in the condition that it does now.

As you are well aware, there are no changes to the division of powers under the terms of the Meech Lake accord except in the area of immigration. There are basically unchanged fiscal powers, although there are certainly suggestions that the way in which those powers will be exercised may be different under section 106A, which has to do with the spending power.

I see a process of federal-provincial interaction that is underwritten by the terms of the accord, assuming that it does go into effect, and that this in fact is something that is very important to develop and cultivate because so much of our policy-making does have to take place in a joint federal-provincial process in which it is necessary to get co-ordination and to avoid a situation in which governments work against each other. Of course, the accord cannot bring that about, but I do not think it is going to make it more difficult. On the contrary, I think it may help marginally move us in that direction.

Those are three general sorts of thought I have had about the accord, but generally about the debate on the accord, as you know, my overall position is that I think this is an important thing to move forward with and I hope that will be the recommendation of the committee.

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Mr. Chairman: Thank you very much for your comments and also for the paper which you have submitted to the committee. It touches on a number of

other matters but ones which, as you noted at the beginning, we have been discussing and trying to work out in different ways.

Some people have suggested that if we listen to the argument when dealing with the accord about repercussions or possible things that will happen in Quebec, that it is simply political blackmail and we should not do it; that it is something we should not be considering. I suppose it is one of those hard things where one does not know. We have had the argument that if we approve it, we are going to move down the road to separatism; if we do not approve it, we are going to move down the road to separatism. Clearly, to try to make a choice between those two becomes very difficult because of the way the argument is posed.

I guess there is the broader question that does get back to the way in which this was at the final moment arrived at; not so much all of the various discussions that went on ahead of time, but that sense that especially those who feel somehow threatened by the accord feel they are in a straitjacket: How do they respond? How can they do anything? Are we just a bunch of ciphers sitting here?

How do you measure that issue in terms of the ramifications for Quebec? I mentioned before that one of the hard things for a provincial committee is to have the views, in this instance of persons from Quebec arguing why it is important for them--we can read testimony before the Quebec assembly or testimony before the joint committee, but it is more difficult to do it here within this context.

As you look at that balance and the concerns that different groups have expressed, and you referred specifically to the minority groups--if one were to push and say we are only going to select two, maybe three, key areas where we think that had there been more time and had they, instead of signing it, said, "Look, we want everybody to go away for six months and come back and then we will finalize," in point of fact we might have then made a couple of changes that might have to do with women's concern, perhaps putting aboriginal rights as an issue back on the agenda and perhaps something to do with linguistic rights in terms of the anglophone minority and the francophone minorities.

We are told we are not to do any of that because something is going to unravel. As you assess that, if they had not signed it and this had come to us exactly the same way and next month they were all going to meet again--because a lot of the same language could have been used, "Look, boys and girls, if you're going to bring an amendment, make sure it's really critical, because we've come together, all 11 of us, and we've actually made some sort of an agreement."

I guess what people are saying is: "Why can't we bring that forward? Why should not we be able to say: 'If you didn't mean to overlook women, why is it so difficult to open up at least that one?' or 'If you did not mean to leave aboriginal rights off the agenda, why is that so difficult? Surely that does not affect directly the concerns of Quebec.'"

Could you just work through that one? I think it becomes difficult in that context, in responding to people in the context of the package or the deal that was structured, not just that night but over a period of time.

Dr. Leslie: I suppose I watch these things more closely than most, but it is still very difficult for me to respond to that because I was not

actually there. I do not know what negotiating position Quebec put forward. I do not know what negotiating positions other parties to the negotiation put forward. We do know, to take the Senate case, that there was certainly a move afoot to make that part of the package, and Alberta decided that it would not push that particular issue but would leave it until the second round. In fact, the premiers all made the declaration that they were going to give the Quebec agenda priority.

I cannot tell how much was done deliberately and how much was more happenstance, shall we say, so I do not know how different it might be if there had been that process of public discussion between a Meech Lake and a Langevin meeting. I guess all one can say on that is there would at least have been a situation in which, demonstrably, the first ministers could take account of the public discussion, and they would know more about what flexibility they themselves would have in a political sense to make whatever agreement is going to be made.

In the end result, if there is to be a negotiated agreement, basically I think people will have to react to that by saying: "This is a package. I have to regard it as a package. Is it an improvement or is it something that leaves us worse off?" I know there are people who say it leaves us worse off. I suspect that they are exaggerating the importance of certain features of the accord, as much of the earlier discussion this afternoon suggested. I cannot tell you in substantive terms how I think it would have come out differently.

As to the use of the word "blackmail," I am aware of its use. I alluded to its use in my written brief. But it seems to me that all one can do there is to think where an objection is really an insincere attempt to get something extra and where it represents a real concern. The word "blackmail" was used around 1978, 1979, 1980, when the premiers of various provinces said they would not accept sovereignty association. René Lévesque said that this was blackmail. The clear implication is that they are not serious about this.

The perspective of those of us who were more conscious of the political pressures under which those premiers were in fact acting was that they were utterly genuine about it and that it was not blackmail. It was a straightforward statement of what the limits of their political flexibility were.

I suspect that in the Meech Lake accord case the political flexibility of Quebec is stretched to its utmost now. Everything that I have seen about the political debate in Quebec suggests that they have gone as far as they can possibly go. They have been criticized because the distinct society is not coupled with a statement that Quebec can do whatever it wants in the field of language legislation, for example.

The critics of the accord in Quebec have said that the spending power clause leaves the federal government with not only its existing powers but also greater powers and that it can determine the overall character of provincial priorities and the overall character of provincial programs in areas of exclusive provincial jurisdiction. They would have a tough time adopting a more flexible position.

I guess I look at the accord. I hear rumours about the way the Langevin meeting went, that they were sitting around the table at four o'clock in the morning or something like this and figuring they simply could not come to an agreement. There was silence for a long time and then somebody moved forward and there was some change made. I do not know what the substance of the discussion was.



Hearing such things, and I assume the story was not just fabricated, leads me to believe that it was a very difficult process and that the participants were aware that they were operating at the very limits of what was politically possible for them. I do not see them exercising blackmail in relation to each other. That is why I think it is delicate, and it is related to the reason that I cannot really see in substance what might be terribly different if there had been that public discussion. But I would feel more comfortable with the process if there had had been.

1650

Mr. Chairman: Could I follow up then on that? We have had it again. We have discussed it with Professor Courchene just beforehand. A number of aboriginal groups have spoken to us at some length and provided us with material that relates to companion motions, companion resolutions. Their arguments have been: "Look, we understand that there are some political problems, political realities here. So what we are suggesting is that perhaps the provinces look at approving the accord but, at the same time, bringing forward very selective companion resolutions or motions that deal with certain very clear areas where it is thought there could be agreement," and, in their case, talking in terms of--I think this is one of the suggested companion resolutions--just putting aboriginal rights back on the agenda very clearly.

That is an interesting concept because I do not think we have done that very often in Canada in terms of bringing about amendments. In looking at some ways of dealing with some of the issues, do you see that as a meaningful way to approach some of the issues that have arisen subsequent to the accord being passed and trying to carry on some of these discussions and showing people that there can be other routes to achieve their goals, or at least to get them discussed? Is that a valid option?

Dr. Leslie: Yes, indeed. I think there is everything to recommend that. In fact, in a sense we already have it within the accord because there is the reference to the next phase of constitutional negotiation and the specific mention of two agenda items. I think that anything that can be done to give credibility to the sense that this is part of an ongoing process and that the next stage is already starting to go forward, although it will not be brought to completion before this process is over, is entirely salutary. Aboriginal self-government is a good illustration of that. Conceivably, new initiatives in the field of language rights would also be salutary. This would not be the particular concern of this committee but might be of particular interest to, let us say, the province of New Brunswick.

Mr. Allen: I appreciate very much Peter Leslie coming before us this afternoon. There is always a problem with last presenters at the end of the day and it is a good thing we have a vigorous chairman who has more questions than most of the rest of us put together to kind of fill in the gap while the rest of us get ourselves geared up.

Mr. Chairman: Just warming up.

Mr. Allen: First, I want to thank you very much for your remarks on the interregnum, or whatever, from 1982 to 1988 vis-à-vis the absence of Quebec. There have, of course, been people who have come before us who have also used the word "blackmail" around that period with respect to Quebec's refusal to participate, suggesting that somehow this was an unfortunate, ill-intentioned device to get something more yet out of the country. Even some scholarly people who have come from some of our university departments have tended to use that language.

I think clarifying that and making it clear that there was, in fact, implied in 1982 a very profound moral obligation to respond to the central agenda at least of Quebec's concerns as they have been articulated over quite a period of time now is something that we all simply have as an immense burden on our backs in this country and we have to complete. Viewing the accord in that light, it is important to draw some appropriate conclusions, as you have done.

I wanted to ask you about two items. First, from your perspective with regard to intergovernmental affairs and how we best get about conducting them now in the new post-charter and presumably post-Meech era, are we likely to get ourselves hugely overencumbered with all the institutional processes that are going to be part of all that business nationally?

We are talking now, for example, in this committee of various options, not just select committees of legislatures but possibly orders of reference in a Legislature that could convene all the assemblies or legislatures across the country to concern themselves with constitutional matters: joint select committees meeting on a regular basis, joint national constitutional reform committees representing the legislatures and the House of Commons and Senate and so on.

What do you sense down the road there and what dangers are there as we head into that? What are the prospects of some of those alternatives? I do not suggest all of them--I think each of those I just rhymed off are mutually exclusive--but the contemplation of any one of them is obviously a significant addition, first, to the burden of legislators, and second, to the simple functioning of legislatures vis-à-vis each other in the country.

Dr. Leslie: I think there is probably an important distinction to be made between constitutional issues and regular policy issues. I think we are in the process of moving to a more regular set of interactions in policy formation. We have ministerial groupings, councils or what have you, in some cases even with a bit of staff, and they are developing a practice now of reporting to the first ministers. You are getting a regularization of a process of consultation that allows for co-ordination and for provincial input into federal policies, but also for a process through which the federal government can exercise leadership on the formation of provincial policies, and let us remember that there are substantial federal powers that can be used to negotiate with the provinces in that way.

I think that is something that is a very promising development, but it is not really the kind you are referring to, which is more at the legislative level and has to do more, I think, with the constitutional questions. It might help quite a lot to have some of those mechanisms. I do not have an exact picture of them from your description. I would want to think to what extent they are mutually exclusive. You cannot just have everything all at once; I acknowledge that.

You might get out of that kind of interaction a better mutual understanding of what the concerns are. For example, you could get a feel for the perspective on these questions that have come up in the Meech Lake accord from Quebec, and to what extent the members of the Quebec National Assembly are themselves, as I put it before, operating to the limits of the political discretion they can exercise.

I think that kind of mutual understanding would help. You would still have the potential gulf between members of the Legislature and other

interested parties who probably would become interested only at the very last stages and mostly when they are alarmed. That is what we have seen about so much of this debate.

I do not know how that is resolved, but conceivably this kind of interprovincial action, and I think Tom Courchene referred to this also, might be quite salutary, essentially in the sense of what the French call animation sociale, getting people together to sort of prod each other into new thoughts.

Mr. Allen: The other item has to do with the question of the territories and new provinces. Is it your sense that--let us put it this way--without any changes to our provisions in the Constitution as they presently stand, the federal government, by a process of devolution of powers, could quite readily bring the territories so close to provincial status that it would be very difficult for the rest of the provinces to refuse to agree to that final step, and if not, what are the provincial impediments that might still lie out there that would make that difficult?

1700

Dr. Leslie: I have wondered about that. Clearly, the federal government could devolve powers upon the territorial governments and leave them in a position that is similar in many respects to the position of provinces. What they would not have of course is the bargaining power against the federal government itself. You would not be able to get a territorial government relying on its constitutional powers in negotiations with the federal government, or on a general intergovernmental level involving provincial governments as well.

I do not know how that would play out as far as leading provinces to accept the territories' conversion into provincial status is concerned. I guess the reason for their interest in the subject anyway would be to do with the political weight they themselves exercise within the federation. But I do not feel my judgement on that question is good. I simply have not thought myself enough into the position of provincial governments on that question to say anything that would be reliable.

Mr. Allen: Asking yourself the question you did in the midst of that response was helpful and I thank you very much.

Mr. Offer: Thank you very much for your presentation. In the presentation, you invited a question, which I am going to pose, with respect to the whole court reference situation.

Dr. Leslie: Yes.

Mr. Offer: I know that you are most likely aware of the existence of presentations that have said there should be a court reference, the purpose of which would, or could, result in a greater certainty, greater clarity, greater understanding vis-à-vis the positions of the accord and the charter. I am wondering, as you have indicated in your presentation, if you might indicate your concerns with respect to a court reference, because I believe that is how it was phrased in your presentation.

Dr. Leslie: Yes.

Mr. Offer: I do not want to put words in your mouth--

Dr. Leslie: That is quite all right.



Mr. Offer: --but I would like to get your feelings with respect to the purpose and whether it is achievable.

Dr. Leslie: In the first place, I am not a lawyer and I do not speak with great confidence on the point, but I have observed a number of cases in which there have been references. The typical form of them I think is that if we want to do X or Y, do we really have the power to do it.

This province, for example, made a reference case that eventually went to the Judicial Committee of the British Privy Council in 1896. They drafted some legislation to do with local options in the liquor trade and the four applying it asked the Supreme Court of Canada, and subsequently, the Judicial Committee of the British Privy Council, "Do we have the power to enact that law and to make regulations under it?" That seems to be the typical sort of pattern.

You had another interesting case in Manitoba where it wanted to challenge something Quebec had done for egg marketing. They could not refer the Quebec legislation to the Manitoba Court of Appeal, so they had to enact their own law and regulation and ask, "Is this valid?" Then by analogy they would determine whether the Quebec one was OK.

Another one would be the reference case on the Constitution and that would be the closest analogue--this was 1981--but there again you had basically the same kind of question: The federal government is purporting to do such and so. Is that within its constitutional powers? It was a vaguer question because you did not have quite the same kind of details. You had to start with the question, "Does this affect federal-provincial relations, and if it does, is there something Ottawa can do without provincial involvement?"

I see how those reference cases go, but they do not ask the court to imagine circumstances in which a particular regulation or a particular form of words could acquire a particular significance. This is why I wanted to stress the difference between a statute and a constitution. In a constitution, you want to set out general principles and you want the court to apply those principles in situations that are not imagined. I agreed with what Mr. Allen said earlier this afternoon, that a constitution can acquire greater precision of meaning over time as cases come up and you get a better sense of it. But as circumstances change, those principles themselves can also come to mean something else. It is not just what the courts do with it, but also how society changes and technology changes that can give certain statements of principle a new meaning.

In a reference case that says, "Tell us whether this clause generally is going to override that one," you are in effect imagining the court to think of circumstances that are clearly unimaginable and that may occur a century down the road. I cannot see how a court could usefully respond to that kind of question. In that case, you would be asking the court to act very much like a Legislature, and I guess I do not see why a Legislature should ask a court to be a Legislature. That is the essence of my concern about it.

Mr. Offer: To carry on, people have promoted the use of a court reference, wanting such a court reference to get that certainty or get clarity with respect to the positions of the accord and the charter. The court reference is not the route to go in your opinion because of the many variable fact situations that will be presented to the court over time.

Dr. Leslie: That is correct. That would be my view. I do not know

that there is another way to get absolute certainty out of this. I think that is the difficulty of discussing this whole issue. Let us face it: Everything to do with this whole case is a judgement call. One is counter-balancing various forms and degrees of risk. There is the risk that a particular set of words will be interpreted in a particular way that one group finds undesirable, but I think one has to look to the most likely interpretation. As I think you said earlier this afternoon, it is the job of this committee and this Legislature and the other legislatures to try to think things out as fully as they can and to say whether this form of words is basically acceptable. I cannot see a court giving a useful answer to that kind of question, but I guess I have to add that I do not have legal training and there may be ways they can get to these subjects that I have not thought about.

Mr. Chairman: Thank you very much, Professor Leslie. We wanted to try to allow you to get out of here by 5:10 p.m. so that you can get your train and I think we will do that. I would just note that the reference you made to 1896 and local option, especially for government members around this table, causes us perhaps a momentary shudder as we find we are still dealing with some of those issues.

Dr. Leslie: I had not thought of it as a contemporary analogue, Mr. Chairman.

Mr. Chairman: That is not for this committee. We thank you very much for your paper and for the discussion we have had with you this afternoon, and we wish you a safe trip back to Kingston.

Dr. Leslie: Thank you very much, Mr. Chairman and members of the committee.

Mr. Chairman: Just before adjourning, remember tomorrow we are beginning at 9:30 a.m. with the Ontario Human Rights Commission.

The committee adjourned at 5:09 p.m.

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